

**ROBERT GATES
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ELIOT A. COHEN

the weekly

Standard

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CODE CHAOS

Another nightmare
for doctors, courtesy
of the federal government

BY STEPHEN F. HAYES

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Brutality Bites

THE SCRAPBOOK confesses to a soft spot for the preservation of historic architecture. We understand, of course, that cities are dynamic, not static, and that sometimes progress demands sacrifice. But we also understand that the march of “progress” sometimes points us upside-down—has New York ever recovered from the 1963 demolition of its 1910 Beaux-Arts Penn Station?—and that today’s monstrosity might well be tomorrow’s masterpiece.

Washington is full of examples of this ongoing debate. In the early 1960s, for example, the Kennedy White House was gung-ho to demolish its Second Empire neighbor—the old State, War, and Navy Building (1875)—and replace it with something like, well, the John F. Kennedy Center for the Performing Arts (1971), known locally as the Box the Watergate Came In. Fortunately, that never happened. And while the structural defects of the Kennedy Center keep it under siege by scaffolding and construction crews, the old State, War, and Navy Building has lately been reborn as the Eisenhower Ex-

ecutive Office Building, a much-loved landmark in the nation’s capital.

Which brings us to the Third Church of Christ, Scientist building (1970) in downtown Washington, a



Third Church of Christ, Scientist (1970–2014)

stark concrete octagonal structure in the Brutalist style, designed by a student of I.M. Pei. It never quite worked as a downtown house of worship, and few Washingtonians would describe it as appealing. But when the Christian

Science church sought to divest itself of the property, a protracted battle ensued between developers and preservationists. In the end, the preservationists lost, and as THE SCRAPBOOK writes, the building is being demolished.

Some of our friends argue that the Third Church is, indeed, a dramatic example of Brutalist architecture, and assuredly different from its glass-and-steel-box neighbors. But while conceding the point, THE SCRAPBOOK must conclude that the Third Church is also exceedingly, and defiantly, ugly—and we find ourselves in this case cheering the wrecking ball. Whatever comes next must be an improvement.

And we offer this consolation as well: The last great surge in the growth of the federal government occurred in Great Society days, when Bauhaus and Brutalist design reigned supreme. Now that the Third Church is about to disappear, competition for the status of Washington’s most hideous structure—L’Enfant Plaza (1968), another I.M. Pei monstrosity, or perhaps the J. Edgar Hoover FBI Building (1975)—may begin. ♦

Cheerio, Piers!

It must have seemed like a good idea at the time. When the suits at CNN were searching around for a successor to crotchety, unfocused old Larry King—“There’s a lot of good restaurants in Philadelphia. . . . What do you make of *Dancing with the Stars*?”—they settled on 45-year-old Piers Morgan, a veteran British tabloid editor who had found his way onto such television froth as *You Can’t Fire Me, I’m Famous* and *America’s Got Talent*. Morgan seemed to have just the right combination of transatlantic charm, pop sensibility, and social skills to keep CNN’s evening talk franchise going.

Except that he didn’t. Instead of charm, Morgan seemed to exude a genuine distaste for the United States of America and its benighted inhabitants, folkways, and politics. Instead of pop chat, he quickly settled into political harangues and crusades, seemingly obsessed with U.S. gun laws and culture. He didn’t converse with guests so much as argue, or better yet shut them off, deploying the host’s control of the microphone. Ratings plummeted.

And last week, the axe inevitably fell. CNN announced that his catastrophic tenure would end this month, and even Morgan seemed to comprehend the need for eutha-

nasia: American viewers, he complained, had never warmed to “a British guy debating American cultural issues” and had grown understandably “tired of me banging on” about gun control. As it happens, THE SCRAPBOOK is not averse to some gun-control measures; but we certainly had grown weary of Piers Morgan banging on.

The problem is a curious one, and slightly deeper than left-right politics. What was CNN thinking? In theory, it is true that a British chat-show host might prove an entertaining counterweight to standard American fare: He speaks the language, and can learn the names

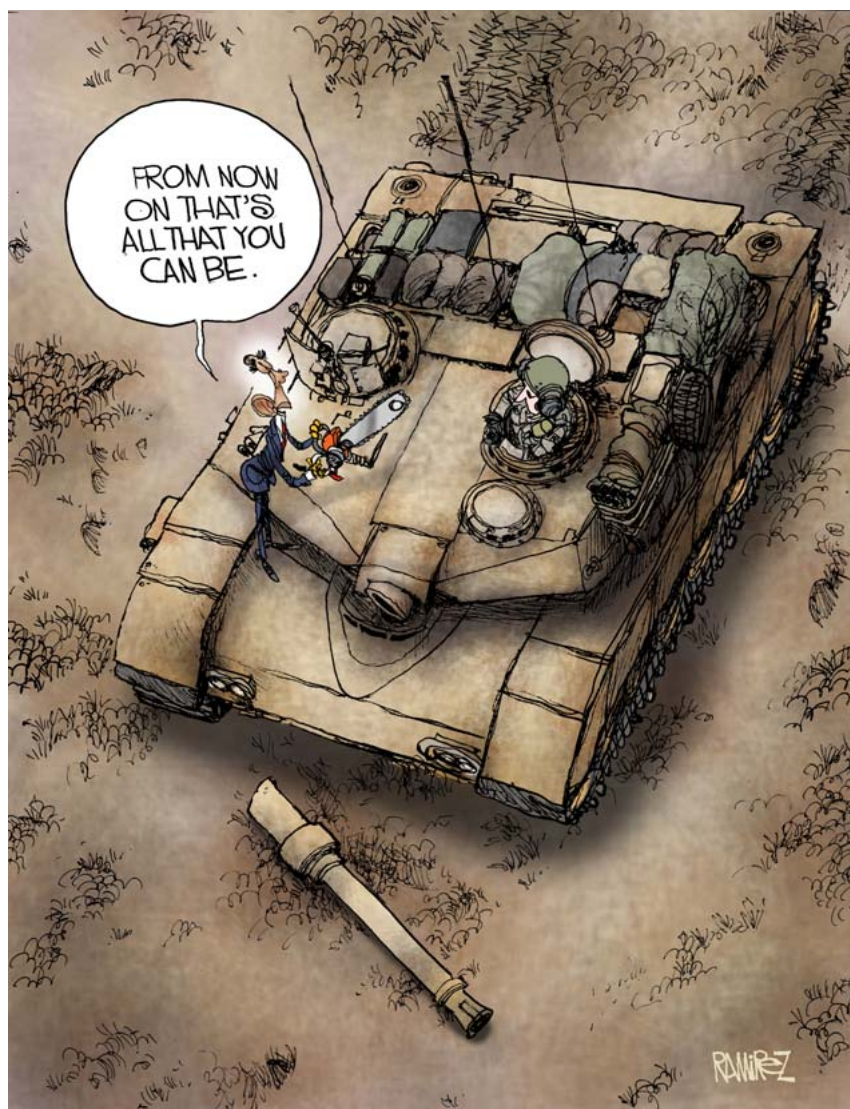
and faces; but as a foreigner, he approaches America from a distance, providing a certain informed objectivity. Indeed, Piers Morgan might have been another David Frost—except that CNN appears to have forgotten that Frost’s attempt at an American talk show (1969-72) was similarly unsuccessful, lasting just as long as Morgan’s.

It is interesting to note that many high-ranking perches in American journalism have been occupied by Britons, and that some of these expats—Tina Brown, Richard Wolffe, Anna Wintour, among others—have achieved a certain renown. The reverse, however, is practically unknown: No American edits any British newspaper, or appears regularly on the BBC. Why? One explanation is that, while Americans may not know much about the world, the world knows a great deal about America. Another is that journalism here is democratic, not a closed corporation or old-boy’s club as in London. Maybe executives at Condé Nast or CNN are just impressed by well-dressed people with British accents.

Whatever the reason, the results have been mixed, and sometimes disastrous. Even MSNBC had to get rid of its resident snarling Briton, Martin Bashir, when his contempt for the host country became intolerable. Piers Morgan is merely the latest example of George Bernard Shaw’s famous comment that the United States and Great Britain are divided by a common language. Perhaps the CNN executives now shopping for a replacement host will remember this time that, to coin a phrase, America’s got talent. ♦

Writing the Rails

There’s long been a certain romance associated with train travel. Think of the trains of the 1920s, replete with well-appointed compartments and dining cars featuring white tablecloths and five-star cuisine. And one need not necessarily go back in time to find



examples of impressive trains: Even in the present day, France’s lightning-fast TGV and Japan’s famous bullet trains retain a certain cachet.

Amtrak, America’s government subsidized passenger rail service, is decidedly less glamorous, it’s probably needless to say. With its endemic delays, prison-style cafeteria food on plastic trays (though unlike the clink, there’s at least beer—for \$7 a bottle), all-too-often-filthy lavatories, and slow speeds, Amtrak is more like a Greyhound bus on rails than a luxurious conveyance. There’s a reasonable case that Amtrak provides a necessary service—particularly in the crowded corridor

between Washington and Boston—but the Orient Express it ain’t.

Amtrak may be aware of this, as it’s decided to start simply giving away its product in pursuit of “buzz.” As the *Los Angeles Times* explained last week,

Amtrak has launched a still-unstructured writers residency program thanks to an offhanded remark by Alexander Chee and some impassioned pleas on Twitter. In a PEN Ten interview that posted Dec. 23, Chee, author of the forthcoming novel “The Queen of the Night,” said that trains are his favorite place to write. He then commented, “I wish Amtrak had residencies for writers.”

Bizarrely, other writers seemed to share Chee's sentiment, and uttered words never before heard in the English language: "I want to spend several days on Amtrak!" And so, the *Times* continues, Amtrak decided to accommodate them:

The first writer to accept its residency and blog about it is Jessica Gross, who traveled from New York City to Chicago and back. That was thanks to Twitter, where Gross was among the several writers who enthused about Chee's idea and included Amtrak in their tweets. Amtrak took notice, and residencies were born.

Like the best writers' residencies, Gross' stay with the host (Amtrak) was free. The train company asked, in exchange, that she post about her experience on social media.

This would all be well and good, and hardly THE SCRAPBOOK's concern, were Amtrak simply throwing away its own money. But it's not: The rail company that feels so flush as to give free rides to writers requires more than \$1 billion in taxpayer subsidies each year just to keep the "trains running on time." Or, er, not on time, as the case too often is. ♦

Selective Tolerance

Last week, things reached a fever pitch in Arizona as legislators tried to clarify existing religious liberty protections in state law in light of incidents, in which Christian business owners have been sanctioned for refusing to participate in gay weddings. The bill in question was immediately assailed as "antigay" by journalists we can confidently say cared nothing about how religious freedom laws work. A respected group of scholars—including gay marriage supporters—sent a letter to Arizona governor Jan Brewer explaining that the law was not antigay and urging her to sign the bill. But faced with a threat from the NFL to relocate the Super Bowl and pressure from national Republicans, Brewer vetoed the legislation. THE SCRAPBOOK is old enough to

remember way back in the '90s when archconservatives like Chuck Schumer were widely praised for authoring sweeping federal religious liberty legislation along identical lines.

Interestingly, at the same time there was a handy lesson in what it takes for the powers that be to show some deference to religious conviction. On February 20, bubble gum pop star Katy Perry uploaded the video for her latest single, "Dark Horse," to YouTube. The video is rife with ancient Egyptian costumes and imagery, and about a minute into the song a CGI lightning bolt comes out of the sky and turns an elaborately costumed man into dust.

You could blink and miss the entire shot, and you have to employ Zapruder-esque levels of scrutiny to notice the pendants of the necklaces the man is wearing. But someone did just that and noticed that one of the pendants formed the word "Allah." Before long there was an online petition with 50,000 signatures denouncing this "portrayal of blasphemy. . . . Katy Perry engulfs the believer and the word God in flames." And just like that, the tiny pendant was digitally edited out of the video.

Of course, if the desecration of Christian symbols were ever cause for concern, we'd have to rip about four decades' worth of heavy metal off of YouTube. However, this will never happen because, despite what you may have heard from the media in the past week, Christians are actually extremely tolerant.

And so we are once again left to ponder the hypocritical, if not culturally suicidal, paradox of America's elites. Christians who practice tolerance—and have the nerve to ask to be tolerated in return—are bullied and held in contempt. But since Muslims might pose a violent threat, the dominant cultural and political forces cower and hasten to remedy even inconsequential slights.

There's no word yet on what tragedy in the Mideast the Obama administration will attribute to the Katy Perry video, but we'll probably find out soon enough. ♦

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Learning to Love Reagan

Though raised Catholic, I was educated by Quakers, and from an early age I took my politics from the Society of Friends. They were for the United Nations and against pollution and—this being the late 1970s—terribly concerned about the bomb. We heard a lot about nuclear war at school. Our little library had an illustrated book detailing, for young readers, what it had been like for the poor souls at Hiroshima. I was only 5 years old the first time I checked the book out, but I got the message: Americans were a monstrous people, and none of this would have happened if Dag Hammarskjöld had been around to stop us.

Yet soon enough the Quaker rub made me suspicious. In the fall of 1980—I was in first grade—Ronald Reagan was running for president against Jimmy Carter. I was, as the professionals say, a low-information voter when my school held its straw poll. As I recall, Carter swept the school by roughly 120 to 1, the lone holdout being a persnickety friend of mine who was against stampedes more than he was for the Gipper.

At the time, despite my ignorance of politics, I had an intuition for probability. It seemed that a nearly unanimous sample of 120 people must mean something. Had Carter merely won a large majority—60 percent or even 70 percent of the vote—then maybe Reagan might have had a chance. But 120 to 1? Plainly, Carter's election was a sure thing.

My sense of the political terrain was confirmed the night of the election when I asked my parents who was going to win. They replied gravely that they hoped President Carter would

win, because if Mr. Reagan was elected there could well be a nuclear war.

This snapped my head back. I knew what nuclear war meant—I had seen the picture book. And so I went to bed secure in the knowledge that Jimmy Carter would be victorious. As I reasoned, our straw poll was obviously right since *no one* would vote to start a nuclear war.



The Reagans welcome Queen Elizabeth and Prince Philip to the ranch, 1983

The next morning came as a shock. Like Pauline Kael, I knew no one who had voted for Reagan. After an interval, though, the result began to make me suspicious of the entire liberal project. After all, if it was true that no one would vote for nuclear war—and that had to be true—then Reagan's victory must mean that not everything I was being told about him was bona fide.

All of which is a long way of saying that Reagan held a special place in my political affections. But it was a distant affinity. I have almost no contemporaneous memories of the man, other than his election, his being shot, and a handful of speeches.

While visiting California a few weeks ago, I had an opportunity to tour the Reagan ranch in the hills above Santa Barbara. The kind folks

at the Young America's Foundation agreed to take me up there. The group bought the ranch from Mrs. Reagan and administers it as a historic site.

The first thing that struck me about Rancho del Cielo was its modest scale. The main house is scarcely bigger than my first apartment. It has just two bedrooms, and the master bedroom is the only room with heat. There, Reagan had taken the twin beds present when he bought the place, pushed them close, and lashed the metal headboards together with plastic zip ties. This is where the most powerful man in the world chose to rest his head with his wife.

In addition to the bedrooms, there's a kitchen, a dining/living area, and a sitting room. That's the entire house—the home into which the president welcomed Margaret Thatcher, the queen of England, and, after both men had left office, Mikhail Gorbachev. It's the retreat where he enjoyed his most private moments.

There's one other room, actually. Behind the house is a barn with a garage that

doubled as Reagan's workroom. His chainsaws still hang there in a row up high; a long shelf is crammed with WD-40 and the assorted oils, cleaners, and greases that are always helpful for men who work with their hands. His bench grinder, worn and dirty, sits clamped to a side table. I've always wanted a bench grinder.

And there on another shelf is his hardware. Every man has his own system for sorting washers, toggle bolts, nails, and the like. Reagan favored clear plastic cylindrical organizers. It's a fine choice.

I'd always thought that Reagan was essentially unknowable, and as a political figure he may be. But at his ranch, for the first time, I thought I got a glimpse of what he was like as a man.

JONATHAN V. LAST

Deeply Unsettling

America's chattering classes seem at last to have awoken to the fact that the U.S. military ain't what it used to be. Even the *New York Times* allows that "the Pentagon's proposals to reduce the Army to pre-World War II levels" could "seem unsettling to a nation that prides itself on having the world's most capable military." It could also unsettle the world, and most of all those allies who rely on the United States to keep a variety of dangers at bay.

Indeed, the real news in last week's budget announcements from Defense Secretary Chuck Hagel is that it's finally news. After all, this is hardly the first time Barack Obama has cut military spending. When this president moved into the White House, he inherited a military that George W. Bush belatedly had expanded to conduct the Iraq surge and whose budget, outside of war costs, had made only the smallest dent in the drawdowns and the "procurement holiday" of the Clinton era. However, instead of addressing the "hollow buildup" of the Bush years, President Obama, with Robert Gates at the Pentagon's helm, proceeded to cut some \$400 billion more from the military's planned spending—all of this coming before the Budget Control Act (BCA) and its nearly trillion dollars in mandated cuts.

Now, living under the BCA, and despite some small relief from sequestration's caps provided by the Paul Ryan-Patty Murray budget deal this past December, this year's defense budget and the just-announced budget for next year will be nearly \$200 billion less than what even the Obama team had planned to spend when it put forward its budget plans just three years ago.

And these reductions don't really capture the full story, because, as with compound interest, the effect is magnified over time. Thus the number of soldiers in the active-duty Army is projected to fall from the pre-Obama strength of almost 570,000 to about 440,000. And even that is a wildly optimistic number: The administration is assuming that after this year, the BCA spending caps will disappear. Even if that were so—as we devoutly hope it is—it's not something to plan on. On the current budget trajectory, the Army will slip below 400,000 by the end of the decade.

The other services are on a similar, if less severe, downward course. So are procurement programs. The Navy will be able to buy just 32 littoral combat ships—the smallest and cheapest surface combatant—instead of 52. Goodbye to the Navy's hopes of having a 300-ship fleet, the minimum it has long said it required to meet its global responsibilities. And a number of older platforms—the A-10 "Warthog" close-air support aircraft, the U-2 spy plane, 11 Navy cruisers—are

being retired before the end of their service life, even though they are in high demand by U.S. theater commanders. Lack of training funds has already reduced unit readiness to dangerously low levels, according to the service chiefs of staff. And, irony of ironies, the Obama administration, while subsidizing a monumental expansion in civilian health care entitlements and renegeing on a proposal to constrain the outlandish cost-of-living adjustment for Social Security, wants to hike co-pays for military retirees and reduce other benefits. So while the country's defense burden slips below 3 percent of GDP, entitlement spending is well over four times that of defense and continues to grow and grow.

The rationale for all this cutting, says Hagel, is that he's "not budgeting and prioritizing for wars." And he has a point: The administration ignominiously "ended" the U.S. effort in Iraq, and is setting the stage for a similar bug-out in Afghanistan later this year. Obama "led from behind" in Libya, and made the military eat the billions his feckless strategy cost out of its baseline budget. He's sidestepped any action in Syria, despite laying down a red line to Bashar al-Assad. The ballyhooed "Pacific pivot" is a more delicate pirouette; just last week a Chinese general demanded an "air defense identification zone" for the South China Sea, having gotten the United States to acquiesce in one over the Sea of Japan.

Retreat is cheap—for a while. The notable thing about returning to "prewar" force levels is that they set the stage for the wars to come. Preserving the peace is always cheaper than fighting to achieve it. But Barack Obama finds it "unsettling"—to reverse the *Times* formulation—to preside over an America that still "prides itself on having the world's most capable military." To our current commander in chief, that capability apparently is just an invitation to get into mischief.

Even worse would be to have the military capacity to sustain the security guarantees of the past. Hagel made it plain: The U.S. military has become a one-war-at-a-time force and has cast aside the traditional two-war standard that guided American strategists in the past and which kept the great power peace for the past 60-plus years. Of course, any nation with only one bullet will be reluctant to pull the trigger.

Alas, congressional Republicans have been the enabler of this disarmament. The party's accountant wing cooked up the Budget Control Act and accepted its sequestration provision that allowed Obama to do what no previous Democratic president would dare. So the weapon used to assault our military preparedness and national strength has Republican fingerprints on it as well. Ryan-Murray was a first step to correct this mistake, but only a first step.

In the meantime, the world, from East Asia to the Middle East, is “unsettled” and becoming ever more so. Does anyone doubt that the decision in Washington to slash its defenses has been fully noted in Moscow, Beijing, Pyongyang, Tehran, and North Waziristan? Like Jeremiah, we say judgment is inevitable. Unless the present course is reversed, the wages of weakness will be paid in increased instability, crises, and ultimately conflicts that might well have been avoided.

—Thomas Donnelly & Gary Schmitt

Excluding by Race

In his State of the Union speech in January, President Obama said he was planning a new initiative to help “more young men of color facing tough odds to stay on track and reach their full potential.” Last week, Obama launched “My Brother’s Keeper.” In essence, the president will use the power of his office to nudge foundations, corporations, and state and local governments to find ways to help “young men of color stay in school and out of the criminal justice system,” as the *Washington Post* put it.

There is an obvious question here. By “color,” the president means “black and brown,” as his former faith-based adviser, Joshua DuBois, wrote in the *Daily Beast*. But why is the initiative limited to African-American and Hispanic young men? Why is it not open to young men regardless of color—and, for that matter, young women, too?

After all, young Americans facing “tough odds” who want to reach their full potential come in all colors and races, as well as both sexes. By shutting a door of opportunity against some, the president is inviting a lawsuit. More, he is damaging (though not for the first time) his reputation as a politician who sees “not a black America and white America and Latino America or Asian America” but “the United States of America,” as he put it at his breakthrough speech at the 2004 Democratic National Convention.

The new initiative classifies, and encourages its business and nonprofit partners to classify, on the basis of sex and, within the male sex, on the basis of color. But sex-based classifications made by government are unconstitutional unless they have what Justice Ruth Bader Ginsburg, writing for the Supreme Court majority that in 1996 ended the male-only admissions of the Virginia Military Institute, called an “exceedingly persuasive justification.” While it’s hard to see how the president’s initiative could meet such a stiff requirement, color-based classifications confront an even higher hurdle: They are unconstitutional

unless narrowly tailored to achieve a compelling interest.

President Obama has said that the “disparities that persist in the African-American community today can be directly traced to inequalities passed on from an earlier generation that suffered under the brutal legacies of slavery and Jim Crow.” Perhaps so-called general or societal discrimination is the compelling interest the White House has in mind, at least in the case of black young men.

But in the 1989 case *City of Richmond v. J.A. Croson Co.*, striking down the city’s race-based contracting program, the Court by a vote of 6-to-3 agreed that societal discrimination is not a compelling interest. Racial classifications, wrote Justice Sandra Day O’Connor, are “strictly reserved for remedial settings.” Nothing Richmond offered as evidence of the need for the program—including the statistical gap between the percentage of minority construction firms awarded contracts and the percentage of minorities living in the city—was strong enough to permit an inference of discrimination.

Surely the Obama administration is not trying to be sued. But on the assumption that the initiative offers benefits only to young men of certain colors, then some young man not of those colors denied on that account participation in a given program could well have standing to bring a case. The same is true of any young woman denied participation, even a young woman who is African American or Hispanic.

What makes the new initiative an almost certain loser in the courts is its exclusionary nature. In the landmark 1978 *Bakke* case, in which the Supreme Court struck down a race-based admissions program, 16 of the 100 seats in each class were set aside for African-American, Latino, Asian-American, and Native-American applicants—an aspect of the program that especially bothered the majority. Obama’s initiative goes further by excluding entirely from its programs all young men who are neither black nor brown.

The initiative calls to mind racially exclusive programs designed for young people of color that have come to light, and been challenged, by young people willing to insist on equal rights for all Americans. An example: Several years ago, the Dow Jones News Foundation, Virginia Commonwealth University, and Media General Corporation sponsored a racially exclusive summer journalism internship program. A 15-year-old white journalism student sued, and the case was settled, with the program being opened to all, without regard to race.

Obama has been criticized by liberals within his party for having done little specifically to help minorities, blacks in particular. The new initiative is his response, but the racial classifications it indulges will teach, as Justice Potter Stewart once put it, “that people can, and perhaps should, view themselves and others in terms of their racial characteristics.” Obama ought to open the initiative to all and use socioeconomic criteria that are color- and sex-neutral to determine which young people need help in staying on track and reaching their full potential.

White House sources told certain media outlets on February 10 that the press office would be distributing information on the initiative on February 13. That didn't happen until February 27.

We have a hunch why. The lawyers have been in knots over it, wondering how to save it from unconstitutionality. They won't be able to. Someone in the White House should advise the president, who once aspired to transcend race, who once spoke movingly of how we are "one people," that his initiative needs fundamental correction.

—Terry Eastland

Obamacare vs. Medicare

One of President Obama's greatest political challenges has been hiding the fact that Obamacare is largely financed by siphoning huge sums of money out of Medicare. In particular, Obamacare cuts—or guts—Medicare Advantage, the popular program that allows seniors to get their Medicare benefits through private insurers. In fact, it's only these Medicare Advantage cuts that allow the Congressional Budget Office to pretend that Obamacare won't raise deficits—an implausible notion that polling indicates only a very small percentage of particularly credulous citizens believe.

Late on Friday, February 21, in a 148-page, after-hours communication, the Obama administration declared that cuts to Medicare Advantage, long put off, will finally take effect in 2015. Predictably, and understandably, many conservatives responded by criticizing the announcement.

The cuts are bad in and of themselves, but cuts to the program have been a part of Obamacare's written text from day one. So the real question is not whether Obamacare will cut Medicare Advantage; it's whether the Obama administration—which doesn't want those cuts to become evident when Medicare's open-enrollment period begins on October 15, less than three weeks before Election Day—will take unilateral, lawless executive action to stop the cuts from taking place. That's what has happened to date.

In the lead-up to Obama's reelection, he and his administration weren't satisfied with having mailed out full-color, taxpayer-funded propaganda brochures and run millions of dollars' worth of taxpayer-funded TV ads featuring Andy Griffith, all touting Obamacare to seniors. They knew that such nonsense would quickly be exposed if Obamacare's prescribed Medicare Advantage cuts were to take effect: Seniors would have started noticing those cuts on October 15, 2012.

To avoid that, the Obama administration launched an \$8.3 billion "demonstration project." The Centers for Medicare & Medicaid Services say such projects are meant "to test and measure the effect of potential program changes." This one, though, was a shameless and almost certainly illegal effort to hide Obamacare's Medicare Advantage cuts from seniors until they could no longer express their displeasure at the ballot box. How big a tally is \$8.3 billion? It's about seven times what Obama's campaign raised in total.

The Government Accountability Office identified this "demonstration project" as a sham. The GAO highlighted the project's myriad "design shortcomings," including its excessive focus on 2012, its awarding "most" of its "quality bonus[es]" to plans that didn't perform at above-average levels, and its lack of a control group. The GAO, not known for its bluntness, concluded by writing that Health and Human Services Secretary Kathleen Sebelius "should cancel" the project and perhaps consider conducting "an appropriately designed demonstration" in the future. A few months later, the GAO reiterated that all demonstration projects "must meet the criteria set forth" in law, which the Obama administration had "not established" it had done, leaving the GAO "concerned."

At the time, Nebraska Republican Ben Sasse, HHS assistant secretary for planning and evaluation until January 2009 and now a Senate candidate, said, "If a presidential administration can simply make up the authority to make law and give itself the power of the purse to implement its new law—which not only isn't designed to make existing law work but is actually *against* the purpose of existing law—why do we need a Congress?" Sasse added, "In scope and intention, this is something completely new, and if it's allowed to establish precedent, the only limit on what future administrations could spend money on, or how much they could unilaterally spend, would be their own electoral calculations about what they could get away with."

Were Medicare demonstration projects typically so huge or so lacking in legal justification pre-Obama? Actually, they were usually small and uncontroversial. The GAO said that from 1995 through the onset of Obama's ploy—a period spanning the bulk of the Clinton administration, all of the George W. Bush administration, and beyond—85 Medicare demonstration projects were conducted. Obama's \$8,300,000,000 gambit cost more than all 85 of those prior projects *combined*.

Now, two years later, the "demonstration project" is over, and Medicare Advantage is back on the chopping block. The CBO says that if Obama's centerpiece legislation is implemented as written, about \$200 billion will be funneled out of Medicare Advantage and into Obamacare over the next decade. Like low-premium health plans and their accompanying health savings accounts, both of which Obamacare aims to diminish or eliminate, Medicare Advantage has proven extremely popular: Its enrollment more than doubled, according to the *New York Times*, in just the past eight

years. With over 15 million seniors now in the program—more than a quarter of all Medicare beneficiaries—Obamacare's \$200 billion raid amounts to about \$13,000 per current Medicare Advantage enrollee.

But Medicare Advantage is hardly the only part of Medicare that is scheduled to be looted by Obamacare. The CBO projects that, over the next decade, about \$1 trillion that would otherwise have been spent on Medicare will be rerouted to Obamacare. That represents more than 10 percent of Medicare's entire projected funding—which helps explain why Medicare's Office of the Actuary has projected that, by 2020, Medicare will reimburse doctors and other health care providers at lower rates than *Medicaid* will. Imagine if Obama had pitched Obamacare by saying, *Folks, we're going to pass health reform, and to pay for it, we're going to divert more than 10 percent of the money that's projected to be spent on Medicare.* That pitch would have made Jimmy Carter's "malaise" speech look like a triumph of political rhetoric. But, as the CBO notes, that's exactly what Obamacare will do.

To be sure, Medicare badly needs to be reformed, and less should be spent on it. But at a time when we are \$17 trillion in debt and our Army is shrinking to pre-World War II levels, money shouldn't be reallocated from Medicare to finance a highly unpopular, \$2 trillion overhaul of American medicine.

Similarly, Medicare Advantage needs to be protected, and Obamacare shouldn't pilfer from it. But it would be far more objectionable for Obama once again to refuse to faithfully execute the law as written in hopes of extricating himself—and his vulnerable Senate allies—from a political thicket of their own creation. Conservatives should be a lot more concerned about abridgements of the rule of law and the separation of powers than about cuts to this or that program—even popular and worthwhile ones.

All of this—the Medicare Advantage cuts, the siphoning of more than 10 percent of all projected Medicare spending, the lawlessness—points to the need to repeal the monstrosity that is Obamacare. And it points to the need to advance a well-conceived conservative alternative to pave the way to full repeal. The 2017 Project has proposed one such alternative. It would free Americans from Obamacare's unprecedented individual mandate, its skyrocketing health costs, its weakening of job prospects, its fiscal irresponsibility, its consolidation of power and money at the expense of Americans' liberty, and all the rest of its 2,700 pages of federal largess. At the same time, it wouldn't touch the employer-based tax break for health insurance for most Americans or fail to provide help to the poor and near-poor who get the vast majority of aid under Obamacare, thereby foreclosing a potentially huge political opening for Obamacare supporters. What it *would* do is fix what the government had already broken before Obamacare was passed. It would provide real reform by eliminating the unfairness in the tax code by offering a non-income-based tax credit

to all Americans who purchase health insurance in the individual market, dealing with the problem of preexisting conditions through commonsense regulations and high-risk pools, and lowering health costs by facilitating a real, vibrant market and encouraging as little involvement by middlemen (whether the government or insurers) as possible. It's the opposite of Obamacare's failed approach.

There are other worthwhile conservative alternatives on the table—including a proposal by Senators Tom Coburn, Richard Burr, and Orrin Hatch, and one from the House's Republican Study Committee—and there is still much discussion to be had about shaping an alternative to bring about desired results. But it should be less doubtful than ever that full repeal is both crucial and achievable, and that advancing a well-conceived conservative alternative is the key to that quest.

—Jeffrey H. Anderson

Get Off the Sidelines

"No one can or should sit on the sidelines."

—Hillary Clinton, at the University of Miami,
February 26, 2014

Hillary Clinton is right. Well, partly right. Her characteristic disregard for personal freedom and her instinctive love of the nanny state lead her to say that no one *can* sit on the sidelines. That's wrong. In a liberal society that respects the private sphere, citizens can choose to stay off the playing field of politics. Indeed, some *should* do so. Many of our great national achievements come from individuals staying far from the madding political crowd, and deciding instead to engage in business enterprises, or to strive for manifold forms of intellectual or artistic greatness, or to engage in an array of nonpolitical activities that manifest human decency and even nobility.

But Clinton is right in this respect. If you're already engaged in public life—in particular, if you're a conservative, if you care about the Constitution and about your country—you shouldn't be on the sidelines at this moment of national crisis. In this year's election control of the Senate is at stake, and with it the ability of Congress to mitigate the further damage the Obama administration will seek to do in its final two years.

Of course, 2016 is the true time for choosing. Another four years of a Democratic president would mean that Obamacare survives, the Supreme Court is lost, and Amer-

ican world leadership is gone. Another four years of contemporary liberalism in power would leave conservatives able only to mutter a sad “so long” to limited government, to wave goodbye to the original Constitution, and to say a fond farewell to American greatness.

So conservatives need to step up. THE WEEKLY STANDARD spent much of 2011 imploring men whom we judged would be superior candidates and better presidents than those already running to join the race for the 2012 Republican nomination. For various reasons, Mike Pence and Mitch Daniels and Paul Ryan and Chris Christie resisted the call. Perhaps they were right to do so.

This time we do not intend to do any imploring. Those who don’t want to run shouldn’t. We will assume that if good men and women hesitate, there’s a good reason.

But we will honor those who take the plunge. A couple of weeks ago, our friend and frequent WEEKLY STANDARD contributor Jeffrey Bell announced his intention to seek the Republican nomination for Senate in New Jersey. Bell won that nomination as a young man in 1978. An unknown, he engineered a historic defeat of the incumbent liberal Republican, Clifford Case. Even though Bell lost the general election to Bill Bradley, his upset played a role in changing the character of the Republican party and in paving the way for Ronald Reagan in 1980.

Bell has had a fruitful career since then as a conservative activist and thinker. He didn’t have to choose to once again subject himself to the rigors of elective politics. But he did. As it happens, we suspect, contrary to conventional wisdom, that Bell has a chance—an outside chance—to defeat the overrated incumbent, Cory Booker. We think he has a good chance to help the overall conservative cause by running. The fact is, despite the long odds, Bell is back in the arena, trying to perform yet another service for his cause and for his country.

Good for him. Other conservatives should be inspired by his example. They should also be inspired by these words of Thomas Paine—who, though, not much of a conservative, was a patriot of the first order:

“The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of their country; but he that stands by it now, deserves the love and thanks of man and woman. . . . We have this consolation with us, that the harder the conflict, the more glorious the triumph. What we obtain too cheap, we esteem too lightly: it is dearness only that gives every thing its value. Heaven knows how to put a proper price upon its goods; and it would be strange indeed if so celestial an article as *freedom* should not be highly rated.”

—William Kristol

Restoring Regulatory Sanity

By Thomas J. Donohue

President and CEO
U.S. Chamber of Commerce

Anyone who thinks that the federal government isn’t getting much done must not be paying attention to the growing onslaught of regulatory activity. Federal agencies are churning out 4,000 new regulations a year. We might even congratulate them on their efficiency and output if the actual outcomes weren’t so bad, so often.

Some regulations—like EPA’s proposed greenhouse gas rules—are sweeping agency power grabs that threaten entire industries. Others—such as Obamacare and its 10,000 pages of regulations—are so massive and complex that they are collapsing under their own weight. Many rules bear jaw-dropping price tags. The number of regulations that cost \$100 million or more has gone up 80% in a decade. And then there’s the sheer volume of new rules and regulations. Businesses don’t know what will hit them next. This uncertainty has a chilling effect on expanding,

hiring, and investing.

What we need is a regulatory system that restores checks and balances, upholds the rule of law, relies on quality data, and restores good governance.

We proceeded in the right direction last week when Congress took up the Achieving Less Excess in Regulation and Requiring Transparency Act. This comprehensive bill incorporates some vital reforms that the U.S. Chamber supports.

The broader bill includes the Regulatory Accountability Act, legislation to modernize the Truman-era Administrative Procedure Act, which governs our regulatory process. It would enable more transparency and public participation and require agencies to justify the need for new rules. And it would hold agencies accountable for the nature and quality of their data.

Also included is the Sunshine Act, which would address “sue and settle,” one of the worst abuses of the system. This is where environmental groups sue EPA or another federal agency with a wink and a nod, the

agency agrees to a settlement, and a court signs off. As a result, key decisions about how and when to issue new regulations are made in secret, outside of the rulemaking process. The bill would require agencies to give public notice more quickly, providing greater opportunity for public comment.

These and other reforms would help Congress regain control over a swelling bureaucracy that is opaque, unaccountable, and often unfair. And it would give the American people a voice in the process.

The U.S. Chamber will be watching and weighing in. We’ll fight for commonsense reforms to the system and work with agencies to improve regulations. But if the federal government oversteps its bounds or circumvents the process, we’ll challenge regulators in court.

One way or another, regulatory sanity must be restored.



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Ukraine: the Day After

How the United States can help.

BY JEFFREY GEDMIN



A post-victory rally outside parliament in Kiev

It was a year or two before the Berlin Wall fell in 1989. I was sitting in the kitchen of a small, second-floor apartment in the Thuringian town of Ilmenau, when my friend's mother turned pensive and pointed out the window to a hill nearby. In 1945, Frau Loebner explained, American soldiers arrived one day, pitched their tents and seemed to settle in. A few days later, Soviet soldiers arrived and did the same. A few days after that, the Americans left. Only later would this woman and her family discover that they had been fated to live

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their lives on the wrong side of the East-West German border.

In Ukraine today there seems to be an awareness for many that the country is at a turning point. There's much talk of a divide between western and eastern Ukraine. But the so-called pro-Russian Eastern part—which comprises about a third of the nation's territory—is more complicated than some commentators would have it.

In 1991, while support was indeed weaker there, all of Ukraine supported national independence. There's no evidence today that eastern Ukraine wants to leave Ukraine to join the Russian Federation. There's every indication across Ukraine of broad, if uneven and in some places

shallow, support for Ukraine's integration with Europe and the West.

Municipalities across Ukraine have been renaming streets to honor heroes of the Maidan. Businessmen in Donetsk in Eastern Ukraine are providing billboards—with the permission of local authorities—to honor the victims of the police crackdown in their area. Southeast of Kiev, the Dnipropetrovsk city council has renamed Lenin Square the Heroes of Maidan Square. One of the first people killed, before the major crackdown in February, was Serhiy Nihoyan, a Ukrainian of Armenian descent from the Dnipropetrovsk region. It seems to be a fairly diverse lot that supports this revolution. Ukrainian sociologist Iryna Bekeshkina has conducted surveys that indicate a majority of young people, including in eastern Ukraine, favor association with the EU. In “belonging to Europe,” young Ukrainians see for their future rule of law, freedom, and prosperity—and escape from corruption, cronyism, and authoritarian rule.

How do we help these young democrats? First, manage expectations. At the time of Ukraine's “Orange Revolution” in late 2004, spirits soared. There was swooning among pundits and NGOs. George W. Bush spoke of a “powerful example of democracy for people around the world.” Soon, though, there was dismay over Kiev's gridlocked parliament, deferred reforms, and the incompetence and corruption of Ukraine's new Orange leadership.

There is no Vaclav Havel in Ukraine. Certainly not in the person of Yulia Tymoshenko, the multimillionaire former prime minister, who came to prominence during the Orange Revolution and who was recently released after more than two years in prison. The charismatic and ambitious Tymoshenko was seen as a threat by the departed Yanukovich regime. But of Yulia today, the mantra among activists is, “We're glad you're out, now leave us alone.” Tymoshenko was actually booed while on stage at a rally in Kiev.

Ukraine's opposition is not unified.

IMAGES: NEWS.COM

The revolution is not over. And there will be nothing “velvet” about it. A new government will not find it easy to tear itself away from oligarch money and the corruption that is part and parcel of Ukrainian life at all levels. Bret Stephens asks in the *Wall Street Journal*, “How does a nation become self-governing when so much of ‘self’ is so rotten?” That may go too far. Still, investing in democratic reform in Ukraine will require sticking for the long-term, bracing for inevitable bumps, and accepting serious blemishes.

The first step? President Obama must get over what Peter Baker in the *New York Times* terms his “clinical detachment” toward Ukraine. The country needs emergency financial assistance if it’s to avoid economic collapse. The United States can help, including by pressing for much-needed economic reform. The administration certainly can augment democracy and civil society assistance to Kiev. Congress is already working to redirect \$150 million in aid to democracy assistance in Ukraine. That’s a start. Freedom House president David Kramer says the greatest specific need may be to help Ukraine prepare for presidential elections at the end of May. The United States should insist, adds Kramer, that Ukrainians focus “on justice and not retribution” for former regime members.

For the longer term, it’s time for American businesses in Ukraine to wrap as many exchange programs and internships as possible into their “corporate social responsibility” strategies there. Universities, think tanks, and foundations need to step up in similar ways. It’s critical to invest in Ukraine’s human capital. It’s also high time to help Ukrainians lessen their country’s dependence on Russian natural gas. To that end, Chevron signed an agreement with the Ukrainian government last fall, committing \$350 million to explore for shale gas.

Second, we need to grasp with realism the full extent of Russia’s connection and influence. Many Russians

still believe that their country and Ukraine should belong to a single unitary state. Russian czars were buried in Kiev over the centuries. The 1654 Treaty of Pereyaslav, viewed by Ukrainians as the start of Russian domination, is seen by most Russians as the restoration of territories torn apart by the Mongol invasions of the 13th century. There are undeniably strong linguistic, cultural, and historical ties between the two countries.

Russia’s Vladimir Putin exploits this. Note Moscow’s promise of passports to Ukrainians in the east, caus-

stability, unity, and restraint from all sides. Russia plays a strong hand. Business ties are deep. Russian intelligence is likely as active in Ukraine as it is anywhere outside the territory of the Russian Federation. And the country has in reserve its ultimate weapon of soft power. In addition to Kiev’s own dependence, Russia provides approximately a quarter of the natural gas used by EU countries, with roughly 80 percent of those exports traveling through pipelines across Ukraine.

All this means that our Ukraine



Russian Black Sea fleet ships at dock in Crimea, 2010

ing concern among activists that the Kremlin may eventually use as a pretext for military intervention the excuse that it is acting to protect “its citizens.” Note the Kremlin’s formidable information and media campaign depicting Ukraine’s opposition as thugs, armed extremists, and neo-Nazis. Russian prime minister Dmitry Medvedev denounced Ukraine’s leader Viktor Yanukovich as a “door-mat,” when Moscow’s erstwhile ally failed to crack down on protesters.

Putin’s fear of democratization in Ukraine is not entirely irrational. Opposition leader and former Russian prime minister Boris Nemtsov says the conditions that led to Yanukovich’s ouster in Ukraine are all present in Russia.

As a result, the Kremlin is likely to use all means necessary to keep turmoil at least on a low boil in Ukraine—while publicly calling for

policy is also Russia policy. U.S. assertiveness—robust democracy and civil society assistance—will have to be balanced with tactical restraint. It’s the wrong time to push NATO accession, which would only validate Russian propaganda about the alliance wanting “to annex” Ukraine. The Kremlin’s information campaign should be exposed for what it is—cunning, manipulative, deceitful propaganda. And we need to answer all this with what we do best, by providing accurate, reliable news and information through the programming of Radio Free Europe/Radio Liberty and Voice of America. The free flow of information and ideas is oxygen for civil society, and broadcasting is American soft power at its best. Still, we must realize that all of this is part of the long game. There will be no quarterly dividends or short-term return on investment.

“Russia isn’t going anywhere,” says Chris Walker, a senior executive at the National Endowment for Democracy. Which is why, Walker argues, we must also continue to play the long game in Russia, supporting democrats and civil society actors there as well. Indeed, a different kind of government in Moscow one day would mean a different relationship with Kiev.

Finally, we must recognize that this may be, finally, the hour of Europe. We’ve been seeing the hour of Poland, in any case. Polish foreign minister Radek Sikorski has played a key leadership role, energetically supporting the pro-democracy movement, urging restraint from all sides, and insisting that the opposition remain in dialogue with Russia. This, while pro-Ukraine rallies have been held in a number of Polish cities, and wounded protesters from Kiev and elsewhere have been taken to Poland for medical treatment. “They are still taking people from Ukraine to Polish hospitals at no cost,” one activist tells me. There have been video appeals, decoration of Polish towns in yellow and blue Ukrainian flag colors, even acts of solidarity on the front line. Two Polish reporters, Tomasz Piechal and Pawel Pieniazek, were beaten by police at pro-democracy demonstrations in Kiev.

Never underestimate the power of gestures, the importance of symbols, and the capacity of a nation to remember later the vital support received in difficult periods. The Poles got this during the Cold War, and get this today. In times like these, the EU should open its doors very wide. A new government in Kiev should be able to fulfill quickly the EU’s conditions for signing the long-concluded Association Agreement. Full EU membership must be the endgame. Perhaps Warsaw can push Berlin to push the EU.

Let’s encourage the EU to lead. It actually seems so inclined. Brave and authentic cries for freedom are hard to ignore. Which is why it would be a betrayal of American ideals if, at such a moment, we failed to do our own part to help Ukrainians who are fighting for a freer, prosperous future. ♦

Dynasty on the Hill

Two generations of Dingells is more than enough.

BY MICHAEL WARREN



Dingell with his wife and would-be successor, Debbie

In Washington, it doesn’t matter if you win or lose—it’s how long you play the game. Witness the reaction last week to the announcement that Michigan congressman John Dingell would make this, his 29th term in the House of Representatives, his last. The 87-year-old Detroit-area Democrat has been a member of Congress since the 1950s, serving alongside 11 presidents, 10 House speakers, and nearly 2,500 different representatives.

“I’m not going to be carried out feet first,” Dingell said about his retirement, but you get the sense some in Washington wish he would stay until the bitter end. Norm Ornstein wrote at the *Atlantic* that he felt “a real sadness” about Dingell’s departure. “We have not seen many members of Congress, over the entire history of the nation, who have made a mark as broad

and enduring as Dingell,” he wrote. Dingell, Ornstein added, is a “giant of the House” and a “master at work.” The *Washington Post*’s Dana Milbank, who also used the term “master,” wistfully referred to Dingell as a “20th-century lawmaker,” an artifact from a bygone and better age of legislating.

His seat was once held by John Dingell Sr., a New Deal Democrat first elected in 1932. When John Sr. died in office in 1955, the 29-year-old John Jr. won the subsequent special election and has held the seat ever since. That’s more than 80 years of uninterrupted Dingellism. Dingell the younger has continued his father’s tradition of introducing a bill to institute single-payer health care at the beginning of every Congress, and so the dream of the New Deal survives well into this century. David Maraniss, also at the *Post*, marveled at the longevity of the Dingell dynasty under a headline calling the man’s

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career “legendary.” “One could say that Dingell outlasted the two institutions he loved most, Congress and Detroit,” wrote Maraniss.

One could also say that’s a scathing indictment of the Dingell era. In 1955, the young Dingell’s first year in office, America’s car industry sold nearly 8.5 million automobiles and Detroit had a population of over 1.8 million. In 2013, Ford and GM combined sold 5.3 million cars, just a few years after GM had filed for bankruptcy. The city of Detroit, meanwhile, has withered to just over 700,000 people, and it too has filed for bankruptcy. Its blight is a manifestation of the failed progressivism Dingell championed in Congress.

As for Congress, Dingell himself says its dysfunction is the reason he’s leaving. Capitol Hill has grown “obnoxious” and sullied by bitter partisanship. “This is not the Congress I know and love,” Dingell said.

It certainly isn’t. Dingell’s House was controlled by Democrats without interruption from 1955 to 1995, and in his heyday he was one of its most powerful members. From 1981 to 1995, Dingell was chairman of the Energy and Commerce Committee, whose purview extends from energy and consumer protection to health care and telecommunications. Dingell made a name for himself by using his subpoena power to pursue countless oversight investigations during Republican presidencies.

Some of the revelations from Dingell’s hearings were relatively trivial but entertaining. In a 1985 hearing with executives of defense contractor General Dynamics, Dingell asked about a \$155 charge to the government on behalf of a “Mr. Furstien” incurred at Silver Maple Farm. Furstien, it turned out, was an executive’s dog, and the charge was for boarding him while his owner and wife traveled to a ritzy conference in South Carolina. The hearings offered Dingell the chance to grandstand while targeting political opponents and serving allies. One investigation led to the resignation of Ronald Reagan’s first EPA administrator. Another resulted in the conviction of several FDA officials for accepting



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favors from manufacturers of generic drugs in exchange for expediting the drugs' approval. That undoubtedly satisfied the name-brand drug manufacturers who were major contributors to Dingell's campaign coffers.

The 6-foot-3 Dingell earned a slew of nicknames over his years as chairman: the Grand Inquisitor, the Junkyard Dog, Tailpipe Johnny, Truck, and, of course, Big John. He also earned a reputation as a vindictive bully. In 1987, for instance, Dingell championed the bill to designate Yucca Mountain in Nevada as the nation's only nuclear waste depository, which enraged the locals (and still does). Folks on Capitol Hill told the *New York Times* the move was seen as retribution against Nevada senator Richard Bryan, a fellow Democrat who had pushed to impose tighter fuel standard regulations on the auto industry. If you hurt something Big John loved, he'd return the favor.

The 1995 Republican takeover of the House ended Dingell's chairmanship, leading many to speculate he would retire. He held on instead and that same year became the dean of the House, a symbolic position reserved for the most senior member, a sort of parting gift at the end of a career. But when Democrats finally won back the House in 2006, Dingell took the helm at Energy and Commerce once more.

Big John's second reign was brief. In 2009, California rival Henry Waxman successfully challenged him for the chairmanship. At that point, what was left but a place in the record books? Last year, he surpassed the late Robert Byrd of West Virginia for the longest congressional tenure in history.

Dingell stuck around long enough to be remembered not as a partisan attack dog but as Congress's conscience, protector of the traditions and sensibilities of the people's house. Yet in these terribly partisan times, the burden of holding the moral high ground has become too much. Which is why his wife, the 60-year-old former auto industry lobbyist Debbie Dingell, has announced she'll be running for her husband's (and father-in-law's) seat. The Dingells, a Washington institution, live on. ♦

A Documentary in Name Only

Blackfish vs. SeaWorld.

BY MARK HEMINGWAY

The conventional wisdom in Tinseltown is that the biggest Oscar snub of the year went to Robert Redford, who failed to get a Best Actor nod. The Hollywood legend delivered a highly praised and mostly wordless performance of a man fighting for his life on a sinking boat



Hey, Hollywood—where's the love?

in *All Is Lost*. But much further down the Oscar ballot, there might have been an even bigger stunner about troubled oceangoers: The save-the-whales documentary *Blackfish* was not nominated for an Academy Award.

Of the 15 films shortlisted for Best Documentary, *Blackfish* was the second-highest grossing, earning a respectable \$2 million in theaters, and might have been the most-watched documentary of the year. In addition to being a hit on Netflix, the rights were also bought by CNN Films, and the news network has broadcast the film several times.

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What's more, *Blackfish* seems perfectly targeted to liberal Hollywood sensibilities: It's a tale of how corporate greed resulted in the abuse of some of nature's most majestic animals and a handful of tragic deaths. As an added bonus, *Blackfish* purports to expose the underlying rot at SeaWorld, one of America's most popular theme parks.

The fact that it didn't get nominated may have something to do with the PR battle the filmmakers have been waging with SeaWorld, which has raised serious concerns about the documentary's veracity. As the commercial prospects and audiences for documentaries have grown in recent years, Hollywood may be wising up to the fact the genre has become a dumping ground for dubious liberal agitprop. It's also worth asking what CNN—"the most trusted name in news"—is doing backing an obviously tendentious film.

If you set out to make a movie about the problems of keeping whales in captivity and possible SeaWorld malfeasance, there's no shortage of material to work with. Over the last few decades, there have been dozens of publicly documented troubling and dangerous incidents involving animal trainers working with killer whales. These include four deaths, notably the highly publicized killing of SeaWorld trainer Dawn Brancheau in 2010. Three of the four killings were done by a single of SeaWorld's whales, Tilikum, and it's a legitimate question whether SeaWorld did enough to protect its employees. In 2012 the Occupational Safety and Health Administration issued regulations preventing trainers from performing with whales close-up and unprotected. This was a key component of SeaWorld's shows, which involved

trainers riding whales and being shot into the air as the whales surfaced.

SeaWorld maintains that they're being unfairly singled out by OSHA. Many other potentially dangerous forms of entertainment have escaped OSHA's purview—65 NASCAR drivers, for instance, have died in fatal accidents, yet it's difficult to imagine federal regulators imposing speed limits on the sport. SeaWorld is still appealing OSHA's regulations in federal court, and they have good reason to think they were treated unfairly. In January, OSHA announced that Lara Padgett, the employee who led the agency's six-month investigation concluding SeaWorld was guilty of "willful" safety violations, was under internal investigation. That's because photos of Padgett surfaced online showing her schmoozing with the director of *Blackfish* and a number of former SeaWorld employees featured in the movie at the Sundance Film Festival in Park City, Utah, last year.

The overarching message of *Blackfish* isn't that SeaWorld is guilty of creating an unsafe work environment—the film is in fact an 83-minute jeremiad against keeping whales in captivity. Given the size and intelligence of these animals, that's not an entirely unsympathetic notion. However, there's no argument the film won't entertain to advance its point, no matter how absurd. To make the case that these animals must be respected, Lori Marino, Ph.D., a neuroscience and behavioral biology expert at the Center for Ethics at Emory University, is brought on to inform viewers that whales have a "sense of self, a sense of social bonding much more complex than other mammals, including humans." There's a lot about whales we don't understand, but you'd be forgiven for being skeptical that whales have a level of cognizance that René Descartes would appreciate.

What *Blackfish* doesn't mention is that Marino is also the science director for the Nonhuman Rights Project, which aims to "attain legal personhood for nonhuman animals by operating within the reigning legal paradigms." The Nonhuman Rights Project has

filed a number of lawsuits to advance that aim. In 2011, People for the Ethical Treatment of Animals went so far as to sue SeaWorld, demanding the release of five Orcas on the grounds that their 13th Amendment rights were being violated. The short description of *Blackfish* on Netflix echoed this absurd notion—"They're hunted, herded, and forced to dance. Meet a 15,000 pound slave." Fortunately, federal courts agree extending constitutional rights to animals is absurd. PETA lost *Tilikum v. SeaWorld*, and federal precedent on the matter has been set, putting a damper on nonhuman rights lawsuits.

Beyond the big questions, the film commits many basic journalistic sins. The blog *Micechat*, devoted to theme park news, has documented a number of deceptions in *Blackfish*. The film says that SeaWorld was responsible for capturing whales in Iceland, which is not true. (In 1985, SeaWorld began breeding whales and has subsequently been purchasing them from other parks where they were held in captivity.) SeaWorld stopped participating in whale captures in part because the public was rightly horrified at efforts to capture whales in Puget Sound that resulted in the deaths of a number of Orcas in the seventies. The documentary's treatment of this episode is picturesque, to say no more. A heavily tattooed salty dog who is said to have participated in one of the notorious whale captures explains, "I've been part of a revolution to change a president in Central America and seen some things that are hard to believe. But the worst thing I've ever done is hunt that whale." That short comment raises a number of questions, and none of them enhance the source's credibility.

The footage used to represent the events described in the film comes from entirely different contexts, though the film never reveals as much. During a discussion of the capture of Tilikum, the footage shown is of Keiko, the whale from *Free Willy*, being shipped from Mexico to Oregon in order to be released into the wild. At one point, a former SeaWorld trainer, Samantha Berg, describes her first time getting in the tank to interact with the

whales, while arguing she was unprepared for the event. "They just told me to go do it and I did it," says Berg, as the film shows footage of another trainer, Holly Byrd, riding around the tank on top of a whale. Byrd has spoken out about the film's manipulation, noting that she spent "two years of my career leading up to that point. . . . The one thing I want people to know after watching the movie is that it's not true." Adding to the manipulation, the footage is grainy, and from a distance Byrd could be a dead ringer for Berg.

Another former SeaWorld trainer who worked with the *Blackfish* filmmakers has also spoken out after seeing the film. "*Blackfish* was a complete '180' from what was originally presented to me," said Bridgette Pirtle. "Now, it's almost like my worst fears are unfolding in front of me." According to Pirtle, Jeff Ventre, a former SeaWorld trainer who is featured extensively throughout the documentary, "was fired for multiple safety violations in the water with killer whales."

But for many, the film's most egregious transgression is its treatment of the death of Dawn Brancheau. Brancheau's family has put out a statement distancing themselves from the film, and a former coworker wrote an op-ed in the *Orlando Sentinel* accusing the filmmakers of exploiting Brancheau's death, calling *Blackfish* "a spiteful monologue." It doesn't help that the talking heads in *Blackfish* speculate that SeaWorld deliberately spread false information in the aftermath of Brancheau's death, when the only evidence points to local law enforcement bungling inconsequential details.

Blackfish does raise a few legitimate questions about SeaWorld's practices, but a responsible inquiry would weigh any criticism against an obvious question: Why do we keep any animals in zoological environments? Part of the answer is that we learn a great deal about animals in captivity, and that knowledge often proves vital to propagating the species and protecting their habitats. It's understandable that people would bristle at the notion of keeping such large animals penned up for human amusement, but it's hard to

deny SeaWorld has made voluminous contributions to marine biology. If “save the whales” has gone from hippie slogan to accepted wisdom, that might owe something to the generations of Americans who trekked to SeaWorld to marvel at what Shamu can do.

Blackfish isn’t unique among popular documentaries in its errors and distortions. In 2011, the documentary *Gasland* was nominated for an Academy Award. *Gasland* is a radical environmental fulmination against “fracking,” the drilling technique responsible for our current domestic energy boom. The film’s claims have since been thoroughly debunked by even sympathetic liberal environmentalists.

Also in 2011, a judge blocked an \$18.2 billion ruling against Chevron for allegedly contaminating the Amazon. The ruling extensively cited raw footage subpoenaed from *Crude*, a 2009 environmental documentary made by the Academy Award-nominated Joe Berlinger that glorified the lawsuit and those who brought it. It turns out that one scene left on the cutting room floor showed the American lawyer heading up the class-action suit talking about intimidating Ecuadorean legal authorities and saying it would be “good” for a judge to fear getting killed if he rules the wrong way. Chevron is now pursuing a RICO suit against the lawyers, claiming that they were trying to shake the oil company down.

Unfortunately, movie audiences don’t know what they don’t know and are easily manipulated. There’s no question SeaWorld’s brand has been tarnished by *Blackfish*. Eight big-name musical acts have pulled out of SeaWorld’s “Bands, Brew & BBQ” concert series, citing the documentary. But attendance at SeaWorld parks has actually improved since the film’s release, and the failure to garner an Academy Award nomination probably means the negative publicity will die down soon.

Still, it might be time to start looking more closely at the actual documentation underlying documentaries, especially if organizations such as CNN and the Academy of Motion Picture Arts and Sciences are risking their credibility to support them. ♦

An Ordinary Guy

But not an ordinary congressman.

BY MARIA SANTOS



Rep. Kerry Bentivolio with a pair of reindeer from his herd

Representative Kerry Bentivolio once said, “I have a problem figuring out which one I really am, Santa Claus or Kerry Bentivolio. All my life I have been told I’m Kerry Bentivolio, and now I am a Santa Claus, so now I prefer to be Santa Claus.” Bentivolio, a 62-year-old freshman Republican from Detroit, plays Santa in parades and shows for his business, Old Fashioned Santa and Company, back in Michigan.

Journalists ran with this for obvious reasons, and more than one made reference to *Miracle on 34th Street*. But when you ask Bentivolio about this incident, he sounds not like a lunatic, but rather an oddly intense method actor. “When you’re an actor you go into character. . . . You have to believe you are the character. And I did a really great job. And, yeah, sometimes you’re in character and you really believe you’re Santa. If you saw yourself on a screen, and you go, ‘Wow, that’s me? You’re really Santa!’”

Bentivolio’s office is strewn with

reindeer antlers, one set bedecked with flowers. He owns “six of the friendliest, best reindeer you’ve ever met in your life.” He bought them from Alaska and trained them to pull his sleigh. He tells me it’s not much different from training a horse.

Bentivolio’s election in 2012 was an accident. The incumbent, Thaddeus McCotter, submitted fraudulent nomination petitions for his reelection campaign, and resigned in disgrace. That left Bentivolio, formerly a long shot, alone on the Republican ticket. He went on to win the general election in the affluent northwestern suburbs of Detroit, Michigan’s 11th District. These are some of the richest counties in the state, and include the childhood home of Mitt Romney.

Now Bentivolio faces a formidable primary challenger. David Trott, a foreclosure attorney, raised about \$1 million in his first four months of campaigning last fall. The National Republican Congressional Committee (NRCC) did not include Bentivolio in its incumbent-protection program.

There are many tales of bizarre behavior from Bentivolio. Most have

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KERRY BENTIVOLIO

been reported by the *Detroit Free Press*, with which he has a rocky relationship (he sued the paper for libel in a business-dispute story two decades ago). He appeared in a conspiratorial home movie about 9/11 called *The President Goes to Heaven*. He was accused of emotionally abusing his students when he was a teacher. He once promised to hold a hearing on whether the government might be poisoning us with airplane exhaust. But is he really “Krazy Kerry”—as former write-in opponent Nancy Cassis dubbed him—or just misunderstood?

In person, Bentivolio seems like your eccentric uncle who makes jokes nobody else understands. He’s not a polished politician, and this appears to make his staff nervous. At one point, he remarks, “I don’t use drugs, I don’t chase women, and I don’t drink too excessively. . . . I did make a mistake at the punch bowl, right?” He glances at a staffer, who shifts in his seat and tries to interrupt. “I apologized to my staff.” He then asks me not to write that down.

Before his surprise victory two years ago, Bentivolio had an eclectic career. At various times, he’s been in the military, an automotive design engineer, a homebuilder whose business went bankrupt, a history teacher, and a farmer. Several years ago he started Old Fashioned Santa and Company, not realizing how popular his Santa shows would eventually become. He also owns an apiary, some chickens, and a vineyard.

He served in the Army and National Guard during three wars—Vietnam (he enlisted in 1968), the Gulf war, and Iraq. It was after he was airlifted out of Iraq in 2007 for a neck injury that politics piqued his interest. While recovering at Fort Knox in Kentucky, a group of passing Tea Party protesters in Revolutionary War garb drew him to a rally featuring a little-known ophthalmologist and soon-to-be-senator named Rand Paul. This first gave him the idea of running to be an “ordinary guy in Congress.”

He swears he never saw the whole 9/11 movie he appears in and does not know the intention of its

producers. He was just helping out a friend. In one scene (where Bentivolio does not appear), a nurse comes in to change the diaper of a hospitalized “George W. Bush.” She orders “Bush” to lie in his own excrement as punishment for killing her father on 9/11. Bentivolio’s scenes—at least in the clips released by a former opponent—are much tamer.

It’s often hard to tell whether Bentivolio has been maligned. His records as a high school teacher, unearthed by the *Detroit Free Press*, includes claims he exhibited abusive behavior. The records state he was reprimanded after students accused him of saying he wanted to make them cry and only taught them for the paycheck. Bentivolio says he was joking at the time. He says he never received any complaints until he announced his candidacy “with an R after my name.”

Yet Bentivolio’s account of at least one part of this controversy is inaccurate. The *Free Press* got his records with a FOIA request. He says that’s a lie, since he received no notice of such a request, as his teaching contract required. Instead he’s convinced union employees slipped things into his record while the school superintendent was away from his desk, and the Michigan Democratic party then gave those faulty records to reporter Kathleen Gray. He explains all this hurriedly, as his staff pulls him away to make his flight back to Michigan. “I’ll miss my flight for this,” he insists. Gray showed me the letter from his school responding to her FOIA request.

Other Bentivolio “scandals” are easier to dismiss. He drew mockery for promising to hold a hearing on “chemtrails”—a popular conspiracy theory. Advocates believe the condensation trails left by airplanes are actually laced with dastardly chemicals by the government. But the video of the town hall where he made this promise shows Bentivolio being badgered by a belligerent constituent. After resisting the constituent’s requests, he eventually gives in, appearing weary. He never held the hearing.

Last year Bentivolio was endorsed

by several libertarian and Tea Party icons: Sen. Rand Paul, former congressman Ron Paul, and Rep. Justin Amash. The Tea Party Express, one of the more influential Tea Party organizations, backs him for reelection, calling him a “Mr. Smith goes to Washington story.” Bentivolio won’t identify himself as a Tea Partier or libertarian. But he says he thinks government should stop issuing marriage licenses, arguing that they are a product of Jim Crow laws and designed to regulate interracial marriages. He gleefully produces a four-foot pair of scissors from behind his desk, saying he brought them to cut spending.

But his first year was notable for the headlines he didn’t make. He hasn’t defied leadership or taken fringe positions. Instead, he’s voted with GOP leadership on key legislation, including the subsidy-rich farm bill, which was excoriated by Tea Party groups. He’s currently working on the uncontroversial Safe and Secure Federal Website Act, which would require the Government Accountability Office to review federal websites that store sensitive personal information.

Bentivolio doubled his fundraising this past quarter—\$127,000 versus less than \$60,000 in the third quarter. House speaker John Boehner, Rep. Eric Cantor, and Rep. Paul Ryan have all hosted fundraisers for his campaign. That still leaves him with only a quarter of challenger Trott’s cash on hand.

Trott is known to some as the “foreclosure king.” Bentivolio is often likened to Kris Kringle from *Miracle on 34th Street*, but he may try to cast Trott as Mr. Potter from *It’s a Wonderful Life*. Trott’s company once evicted a 101-year-old woman, Texana Hollis, over \$60 in unpaid taxes. Hollis’s story inspired so much outrage that the Department of Housing and Urban Development eventually let her move back in.

With a strong challenger and so much bad press, Bentivolio may be a one-term wonder. Why all the trouble with the media? When I asked, a member of his staff responded that it’s because he’s so often tongue in cheek, and he’s just “a regular guy.” ♦

The Limits of Consumer Choice

Some things aren't worth shopping for.

BY ELI LEHRER



Part of the unglamorous \$19 billion

Most conservatives, and even some liberals of the dwindling “New Democrat” variety, put near-religious faith in the maxim that greater consumer choice would improve nearly every heavily regulated service. They’re usually right. But examining a case where the benefits of consumer choice haven’t materialized as envisioned—in the consumer market for natural gas—may offer lessons to conservatives and liberals alike as they consider further reforms to the far more consequential health care market.

For many products and services, the benefits of choice are obvious. Within living memory, both landline telephone service and cable television were considered “natural monopolies” that couldn’t support more than

one provider in any area. When technology and deregulation changed the equation, competing services proliferated and prices dropped steeply. Deregulation of trucking, freight railroads, and air travel served to lower prices and increase competition a great deal, while generally squeezing profits for incumbent players.

In the market for home delivery of natural gas, 15 states (including 6 of the 10 largest) now allow consumers to choose their providers and shop for lower prices. But except in Ohio—where one major delivery utility has exited the gas-purchasing business altogether and another actively encourages its customers to buy from other suppliers—more than 85 percent of natural gas customers don’t bother to shop around. And when they do, the choices aren’t impressive. When I looked to switch my provider in

Northern Virginia, several companies advertised as offering competitive service didn’t even answer my inquiries. Of those that did, the “best choice” offered me a savings that would amount to less than \$5 per month.

This is a pity, because vigorous efforts to get more people to use gas at home would yield significant economic and environmental benefits. Gas heat usually costs less and is almost always more reliable than electric heat. It’s also cleaner by almost every measure than any other fossil fuel. But the percentage of houses in urban areas with natural gas service is actually *lower* than when it was used for lighting 100 years ago.

Given these facts, one would expect gas providers to be doing blanket advertising on television, sending out mailers, and competing with each other to benefit consumers. But outside of the Northeast, the only region of the country where home heating oil is still common and the industry has for years been making a major “convert to gas” push, one doesn’t see this sort of marketing. No single reason can explain why. Indeed, gas industry trade associations I contacted were reluctant to give detailed explanations on the record. Four factors, however, stand out: lack of genuine choice, opaque pricing, generally high satisfaction with current service, and the direction of capital investment.

The lack of genuine choice may be the most obvious barrier. Natural gas is a commodity, with prices largely determined in the global markets. Since the companies that sell gas in competition with existing utilities don’t provide duplicate distribution infrastructure, there are few if any “features” they could compete on. Since gas is all the same, they can’t even compete (the way some electric power marketers do in some states) on the environmental benefits of their service.

Pricing is also opaque. Like medical bills, but unlike bills for telephone and credit card services, natural gas bills are subject to few national standards. The electronic bill I get from Washington Gas simply contains an “amount due” with no explanation

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of how much I am paying for gas service. (I had to call for this information.) Natural gas “deregulation” has, like many other forms of deregulation, affected only part of the equation. While the price of natural gas itself floats up and down, the pipes that distribute the gas are so expensive to build that few property owners can actually choose which company provides them. The infrastructure demands create “natural monopolies.” As such, government bodies set regulations determining how much the companies who own them can charge to carry gas.

Consumer satisfaction with natural gas service is also very high. The system is so reliable that the Federal Energy Regulatory Commission, which monitors electric and gas grid reliability, doesn’t even keep statistics on gas outages. Most Americans probably can’t even name their local natural gas distribution company or they will name their electric utility (often a different entity) when asked.

The direction of capital investment may play another role. While the American Gas Association says its members spend \$19 billion a year on infrastructure, the glamour and venture capital go towards efforts that unlock new deposits via hydraulic fracturing, as well as efforts to expand the use of natural gas to replace coal for generating electric power.

Since more and more gas is being used to generate power, the cost and environmental benefits of using gas and electricity are fast converging. For good reasons, much more technology, money, and brainpower go into better ways to get gas out of the earth and use it cleanly for electricity than into finding new ways to pump it into homes for heat and cooking.

A lot of these factors have analogues in the health care market. Just as gas companies generally don’t post their prices prominently, neither do doctors. For all of the political fighting that surrounds health insurance, likewise, most people are happy with what they have. According to a Gallup poll taken last year, among people earning over \$75,000, a group that overwhelmingly

uses private providers, 92 percent were satisfied with their own coverage. Overall satisfaction was a still quite respectable 69 percent.

Likewise, capital investment in medicine emphasizes advanced technology, research, and the discovery of “miracle pills”—all areas in which the United States undoubtedly leads the world—rather than the low-margin, low-glamour business of improving day-to-day care. Although benefit packages once differed a great deal—from “mini-med” plans that provided little real coverage to so-called “Cadillac” plans that erased all bills—the strict benefit mandates under Obamacare have tended to make health insurance into much more of a commodity.

This offers lessons for both liberals and conservatives intent on health care reform. For all its abundant flaws, Obamacare does offer more choices to small businesses and sicker individuals, who now can buy their coverage through the exchanges and choose between plans (at least when the websites are up). Employees of small businesses, who previously were stuck with whatever plan their employer chose, now have a menu of options in many cases. This hasn’t produced much in the way of lower premiums, at least in part because the health market now looks a lot like the natural gas market.

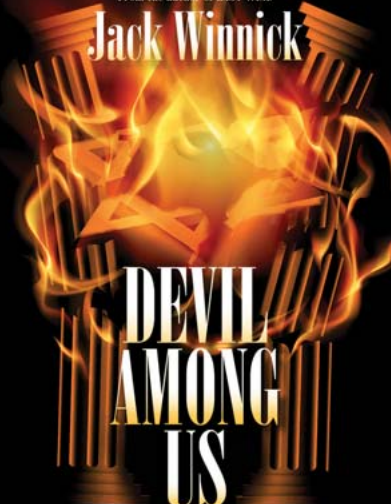
But this also provides reason to think that conservative health reform plans that emphasize choice and consumer empowerment won’t produce vastly better results, either. The old system with fewer benefit mandates wasn’t a great deal better than the new system with more mandates. Likewise, unless pricing becomes more transparent, there’s little reason to think that simply offering consumers more choices—absent some way for them to parse the differences and weigh the costs—will make a big difference.

The natural gas market and the health care market, of course, aren’t mirror images. Gas is truly a commodity, while health care quality can differ a great deal between providers, insurers, and regions of the country. But choice alone is not a panacea. ♦

When a New York synagogue is destroyed...

From the author of EAST WIND

Jack Winnick



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-- Lee Bender, Philadelphia Jewish Voice

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Code Chaos

Another nightmare for doctors, courtesy of the federal government

BY STEPHEN F. HAYES

Jacksonville, Fla.

Ever considered suicide by jellyfish? Have you ended up in the hospital after being injured during the forced landing of your spacecraft? Or been hurt when you were sucked into the engine of an airplane or when your horse-drawn carriage collided with a trolley?

Chances are slim.

But should any of these unfortunate injuries befall you after October 1, 2014, your doctor, courtesy of the federal government, will have a code to record it. On that date, the United States is scheduled to implement a new system for recording injuries, medical diagnoses, and inpatient procedures called ICD-10—the 10th version of the International Classification of Diseases propagated by the World Health Organization in Geneva, Switzerland. So these exotic injuries, codeless for so many years, will henceforth be known, respectively, as T63622A (Toxic effect of contact with other jellyfish, intentional self-harm, initial encounter), V9542XA (Forced landing of spacecraft injuring occupant, initial encounter), V9733XA (Sucked into jet engine, initial encounter), and V80731A (Occupant of animal-drawn vehicle injured in collision with streetcar, initial encounter).

The coming changes are vast. The number of codes will explode—from 17,000 under the current system to 155,000 under the new one, according to the Centers for Medicare and Medicaid Services (CMS).

The transition to ICD-10 was planned long before Congress passed the Affordable Care Act in 2010. But Obama administration officials say it is a critical part of the coming reforms. “ICD-10 is the foundation for health care reform,” said Jeff Hinson, a CMS regional administrator, in a conference call about ICD-10 for providers in Colorado.

It will affect almost every part of the U.S. health care system—providers and payers, physicians and researchers, hospitals and clinics, the government and the private sector. That system—already stressed with doctor shortages, electronic medical records mandates, and the broader chaos of Obamacare—is nowhere near ready. And that has lots of people worried.

Health care professionals use ICD codes to talk to one another. The codes record diagnoses and services provided, and third-party payers—government, insurance companies—use the codes to determine reimbursements and to deter fraud. Coding errors can mean unpaid claims or costly audits—or both.

Virtually everyone agrees that the transition will mean decreased productivity and lost revenue, at least for a time. Some experts, dismissed as alarmists by ICD-10 enthusiasts, are predicting widespread chaos in a sector of the economy that can little afford it.

“I’m very nervous about whether once we flip that switch on October 1 this is all going to work,” says William Harvey, an assistant professor of medicine and the clinical director of the Division of Rheumatology at Tufts Medical Center in Boston.

But nobody really knows just what to expect. And remarkably, despite the embarrassing failures of Health-Care.gov, until recently the federal government had no plans to conduct end-to-end testing of the system before the launch this fall.

In a letter to CMS administrator Marilyn Tavenner on February 18, 2014, four Republican senators pressed for comprehensive testing. The senators—Tom Coburn, Rand Paul, John Barrasso, and John Boozman—are all physicians and expressed deep concern that CMS is planning only one week of “front-end” testing. After receiving the letter, CMS hastily announced that it will offer limited end-to-end testing to “a small group of providers” at some point in “summer 2014” and promised that “details about the end-to-end testing process will be disseminated at a later date.”

That’s hardly reassuring. One health care consultant, a longtime ICD-10 proponent, put it this way: “This is probably going to be the most painful year we’ve seen in the history of U.S. health care.”

On a foggy Thursday morning in early January, 30 medical coders gathered in a nondescript meeting room on the third floor of the downtown Hyatt Regency in Jacksonville. They paid between \$585 and \$985 each to attend a two-day “boot camp” on the new codes taught by Annie Boynton, from the American Academy of Professional Coders. On the black cloth covering each table were the day’s necessities: a Hyatt Regency pad of paper and

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pen, a coffee cup and saucer, a jar full of hard candy, a glass and a sweating metal pitcher filled with ice water. At each place, students found a thin spiral book—the “ICD-10-CD General Code Set Manual” for 2014—and a six-pound, phone-book-thick “ICD-10 Complete Draft Code Set.”

Boynton began by asking the students to introduce themselves, to describe the practice that employs them, and, as an icebreaker, to tell everyone the first album that they’d purchased. She started in the back of the room, where, in an effort to remain unobtrusive, I had chosen to sit.

Left with no choice, I told the class that I was a journalist working on an ICD-10 story, and admitted, reluctantly, that my first album was *Asia* by Asia. (The signature song of that debut album, “Heat of the Moment,” played in my head for the rest of the day, as it may now do in yours.) Others in the class—with one exception, all of them females—came from a variety of fields that will be directly affected by the coming changes. There was an obstetrics coder, a Medicare contractor, a hospital administrator, and an owner of two urgent care clinics (Britney Spears, Def Leppard, the Monkees, and Michael Jackson, respectively).

Boynton, whose first album was *Tiffany*, is a native of northern Maine who now lives in Boston. The computer she uses for her PowerPoint presentation features a large “Eat Lobster” sticker, and her favorite descriptor, not surprisingly, is “wicked,” used as both a positive and a negative qualifier.

Boynton knows her stuff. She is the director of communication/adoption and training for UnitedHealth Group and she helped write the ICD-10 curriculum for the group sponsoring this course, the American Association of Professional Coders. A list of her credentials, displayed on the large screen at the front of the room, contains more letters than the alphabet: BS, RHIT, CPCO, CCS, CPC, CCS-P, CPC-H, CPC-P, CPC-I. She’s been working on the ICD-10 transition for nearly a decade.

She began the session with a straightforward question: “How many of your practices have begun to prepare for the transition to ICD-10?” Just three hands went up. Boynton smiled and shook her head in amazement. She’s not surprised. “I gave a speech to providers in California last month and only 7 of the 300 doctors in attendance had begun preparing for the transition,” she tells the class.

A survey of physician practices released in mid-January backs her up: Seventy-four percent of those surveyed reported that they’d done nothing at all to prepare. (Despite this lack of preparation, most expressed confidence that they’d be ready.)

“How many of you work for a physician who doesn’t think ICD-10 is even going to go live?” she asks. Almost everyone raises a hand. “If I had a nickel for every one, I’d

be on a beach somewhere with a fruity drink in my hand. It’s 5 o’clock somewhere, right?”

Boynton launches into a brief history of ICD-10 and the debate surrounding its implementation. The current coding system, ICD-9, has been in place for nearly 30 years. Although it has expanded gradually, with additional codes

The New ICD-10 Codes: A Sampler

T63112A: *Toxic effect of venom of gila monster, intentional self-harm, initial encounter*

V9412XA: *Bather struck by nonpowered watercraft, initial encounter*

X060XXA: *Exposure to ignition of plastic jewelry, initial encounter*

T63612A: *Toxic effect of contact with Portuguese Man-o-War, intentional self-harm, initial encounter*

S30867A: *Insect bite (nonvenomous) of anus, initial encounter*

W5612XA: *Struck by sea lion, initial encounter*

T71222A: *Asphyxiation due to being trapped in a car trunk, intentional self-harm, initial encounter*

T6112XA: *Scombroid fish poisoning, intentional self-harm, initial encounter*

R461: *Bizarre personal appearance*

T65833D: *Toxic effect of fiberglass, assault, subsequent encounter*



to reflect new diseases, the latest innovations in treatment, and improvements in medical technology, it is nearing something close to its capacity. ICD-10 proponents—and Boynton is one of them—say there is no choice but to move to a more sophisticated code set.

Other developed countries began their implementation of ICD-10 some 20 years ago, after the World Health Organization released its basic version of the new code set. But their versions of ICD-10 won’t be nearly as complicated

as the U.S. version. Boynton says that only 10 other countries use the codes for reimbursements—one of the main functions of ICD-10 in the United States. And payment systems elsewhere are far less complicated, in part because there is usually just one payer: the government.

The multiplicity of payers in the U.S. system partly explains why ICD-10 will be vastly more complicated here. But, paradoxically, if government explains the simplicity of ICD-10 codes elsewhere, government largely explains the complexity of the ICD-10 codes here. And those codes are complex.

“If you sustain an injury falling off a toilet seat on a spaceship in Jacksonville after this class, there’s probably a code for that,” says Boynton.

There are codes for those “bitten” by a crocodile, “struck” by a crocodile, and “crushed” by a crocodile. There is also a code for injuries sustained through “other contact” with crocodiles. “I just don’t want to know about ‘other contact,’ especially with farm animals,” says Boynton, to sustained laughter. “That joke doesn’t fly in Montana.”

Boynton’s “personal favorite” is code V9027XA: “Drowning and submersion due to falling or jumping from burning water-skis, initial encounter.”

It’s the favorite of many who have studied ICD-10 codes (and the “white whale” for others). In the reporting that I had done before attending the ICD-10 boot camp, I’d had no fewer than five people mention it to me. The obvious question: Has anyone ever drowned because he’d jumped from burning water-skis? Do we need codes for things that have never actually happened?

For the answer, I turned to experts at the USA Water Ski Foundation and Hall of Fame. I was introduced to Lynn Novakofski, who was described to me as “a walking history book of water-skiing.”

His answer seems to confirm suspicions. “In my 60 years of skiing, I am not aware of a drowning caused by ‘burning skis,’” he told me. “Back in the ’50s, a popular act in water-ski shows was to pour gasoline on the water in front of a ski jump, light it on fire, and a ‘daredevil’ skier would jump over the flames. I have even seen the ski jumper kick off his skis in midair, dive headfirst into the flames, and swim under water—while everyone in the audience held their breath—to surface a safe distance from the burning oil. More recently, I have on occasion seen skiers, usually barefooting, skimming along with a water and oil soaked towel on fire billowing out behind them. This has a bit more potential for singeing the skin, but all the skier needs

to do is drop into the water and the flames are quenched.”

Even if no one in the United States has drowned after jumping or falling off of burning water-skis, it’s possible such a tragedy has occurred overseas. I checked with Dr. Lorenzo Benassa, chairman of the medical committee at the International Waterski and Wakeboard Federation, who reported, after consulting “literature from the past 20 years” that he found “no cases” of “burning water-ski injuries.” He added: “In our experience, we have never heard of something similar.”

What about an injury short of drowning? Lynn Novakofski allows that there may have been some “minor injuries” as a result of stunts like the ones he’d seen years ago. But he didn’t recall hearing of any.

In any case, ICD-10 has those covered, too. There is

a code for a mere “burn due to water-skis on fire” (V9107XA) and for someone being “hit or struck by falling object due to accident on water-skis” (V9137XA) or jumping from “crushed water-skis” (V9037XD). More generally, there’s “other injury due to accident to water-skis” (V9187X) and “other injury due to other accident on board water-skis” (V9387XA). And there’s the rather inexplicable code V9227XA: “Drowning and submersion due to being washed

overboard from water-skis.”

“An injury from your water-skis catching on fire?” says Senator Tom Coburn, a physician who is leaving Congress later this year. “Eighty percent of these codes will never be used.”

How do these kinds of injuries—real or imaginary—get their own codes? This is one of the great mysteries of ICD-10. No one from any of the U.S. government agencies responsible for ICD-10 regulation and compliance would agree to an interview for this article, despite more than two-dozen requests over the course of two months.

That’s odd, since the Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS) are in the middle of a major public awareness campaign on ICD-10. If you follow CMS on Twitter, your feed is bombarded with tweets conveying the urgency of ICD-10 compliance. “Next CMSeHealth Summit on #ICD10 will be held on Feb 14. Register to attend via webcast here,” read a tweet from @CMSGov on February 3. The next day: “ICD10 is only 239 days away. Check out this CMS blog post on the last year before ICD-10” and “Need an overview of #ICD10? Check out the Intro Guide

‘An injury from your water-skis catching on fire?’ says Senator Tom Coburn, a physician who is leaving Congress later this year. ‘Eighty percent of these codes will never be used.’ Why they exist is one of the great mysteries of ICD-10.

to ICD-10.” And the day after that: “Are you in a small or rural practice preparing for #ICD10? CMS has a fact sheet with tips for your practice” and “Not sure how your clearinghouse can help you with #ICD10? Read this to find out.”

Despite this urgency, public affairs officials from HHS, CMS, and the National Center for Health Statistics (NCHS) at the Centers for Disease Control all declined repeated requests for interviews. A spokesman for the NCHS provided this overview of the process on background: A contractor developed a prototype of the U.S. ICD-10 code set after reviewing recommendations from the World Health Organization; NCHS offered “enhancements” to that code set and revised it further after consulting with physicians, clinical coders, and other users of the previous version, ICD-9.

The objective was greater detail, more specificity. The new code set introduces the concept of “laterality” to ICD coding, allowing physicians to identify in code, for instance, whether a hand injury is a right-hand injury or a left-hand injury. But ICD-10 also adds thousands upon thousands of new injury codes—some 37,000 new musculoskeletal and injury codes all together, according to an ICD-10 expert who consults with CMS.

“There were 9 codes for bites in ICD-9,” says Boynton. “There are over 300 in ICD-10.”

Virtually every conceivable malady or injury has a code. There’s code V9102XA for someone who is “crushed between fishing boat and other watercraft or other object due to collision, initial encounter.” Or T71232A, “Asphyxiation due to being trapped in a (discarded) refrigerator, intentional self-harm, initial encounter.” If you are hurt in an abattoir, there’s code Y9286, “slaughterhouse as the place of occurrence of the external cause.” Code F521 is “sexual aversion disorder,” not to be confused with code G4482, “headache associated with sexual activity.”

Some codes appear to be anticipatory rather than descriptive. Has anyone in the history of mankind ever attacked another human with frog venom? Or sought contact with the same for the purposes of intentional self-harm? Probably not—and not just because frogs don’t produce venom.

But code T63813A is “toxic effect of contact with venomous frog, assault, initial encounter.” I asked Dr. Kyle Summers, one of the world’s leading experts on poisonous frogs, about this. He told me that frogs do not produce “venom,” and therefore, while some are poisonous, none are “venomous.” Summers further explained that while members of the Embera tribe of western Colombia have

used batrachotoxin from the skin of frogs in the genus *Phyllobates* on the tips of blow-darts to kill monkeys, he did not know of any incidents in which the darts have been used on human enemies and had “not heard of anyone intentionally hurting themselves by contact with a poison frog. But,” he added, “I have not researched the issue.” Other codes describe occurrences that would seem unlikely to result in any kind of injury at all, such as code W20XXA, “contact with non-venomous frogs.”

Back in Jacksonville, Boynton moves from a general discussion of ICD-10 to some specifics. She explains in tremendous detail how the new codes offer several different ways of codifying engagements with patients—“initial encounter,” a “subsequent encounter,” and “sequela.” The “initial encounter” in codespeak is not

limited to the “initial encounter” as one might understand it in plain English, Boynton explains. There could, in fact, be several initial encounters with a patient, if those subsequent visits involved the initial injury and treatment. Bewildered looks spread across the class like bad herpes (A6000 or one of the other 38 herpes codes), and the resultant confusion led to a series of questions about the meanings of “initial” and “sub-

sequent.” One student asked the question that seemed to be on the mind of everyone in the room: “So a subsequent visit would still be an initial encounter?” And then, after a brief explanation, another question: “Wait, there could be five initial encounters with the same physician?”

After lunch, the class plunged deeper still into the intricacies of the new coding. Boynton walked the class through “excludes” codes, meant to prevent using two codes that would seem to contradict one another, and the advent of the “placeholder” character, intended to allow coders to fill all seven characters of a code in which not every character has meaning. (“X can be a placeholder, but it can also be a code character.”) Boynton is a very clear communicator and managed to keep the interest of most of my classmates by alternating between code minutiae, issuing stark warnings about the consequences of failing to understand ICD-10, and dropping the occasional codeworld inside joke.

But the system is complex and the scope of change is immense. “Learning these codes makes learning Mandarin seem easy,” she tells a frustrated student. This is what has so many in the health care world nervous.

The introduction of a system with exponentially more

The ‘initial encounter’ in codespeak is not limited to the ‘initial encounter’ as one might understand it in plain English, Boynton explains. There could be several initial encounters with a patient, if all the visits involved the initial injury.

codes, and far more complicated codes, will inevitably mean many more coding errors. The default position of payers, whether government or the private sector, will be to deny all claims that are not coded correctly. In many cases, providers will be left with a lose-lose choice: forgo payment altogether or dedicate valuable time and resources to appealing the denied claims. Hospitals, large physician practices, and other big institutions can absorb some of the losses and have the workforce at their disposal to challenge the denials. Small practices do not.

“When you have a provider who hasn’t prepared, who doesn’t know the codes, and they have every claim rejected because of improper coding for three months, that’s going to put people out of business,” Boynton tells me over breakfast before the second day of training.

“Most practices in the United States are small businesses,” says Senator Coburn, an obstetrician and family practice doctor from Muskogee, Oklahoma. “This could ruin them.”

An ICD-10 preparation plan from the Health Information and Management Systems Society (HIMSS) advises practices to have a minimum of six months revenue in reserve to help avoid that possibility. Such warnings have been coming for years. Financial institutions have begun offering lines of credit targeted to potential ICD-10 shortfalls. “With potential disruptions becoming more and more probable as the industry hurtles haphazardly towards October 1, 2014, having half a year’s cash or credit on hand may be vital to keeping your doors open,” writes Jennifer Bresnick in *EHR Intelligence*, a website that tracks news on electronic health records and medical technology.

A 2008 study on the costs of implementing ICD-10 from the health care IT firm Nachimson Advisors warned that “significant changes in reimbursement patterns will disrupt provider cash flow for a considerable period of time.” The study projected that the total cost of the ICD-10 implementation would be \$83,290 for a small practice (3 physicians and 2 administrative staffers), \$285,195 for a medium practice (10 providers, 1 professional coder, and 6 administrative staffers), and \$2.7 million for a large practice (100 providers, 10 full-time coding staffers, and 54 medical records staffers). Boynton says those numbers seem on target five years later.

Coburn believes the new system will require doctors to spend more time coding. “You’re just not going to trust a nurse to do that,” he says. “If they put in the wrong code, they’re going to hammer you. The penalties are getting more severe. If you fail a recovery audit, they don’t just take your money, they penalize you on top of that.”

Coburn’s concerns go beyond the likelihood of a rough transition to ICD-10 to the long-term effect the changes could have on the doctor-patient relationship.

The specificity of the codes will require doctors to spend more of their time on documentation. “Let’s say it takes you an extra two minutes per patient to do the coding yourself,” he says. “It doesn’t sound like much. But if you see 30 or 40 patients a day, that’s at least an extra hour you’re spending on this stuff. That minute or two that you’re not spending talking with the patient might be the minute when you learn something critical to your diagnosis or treatment plan.”

His prescription: “Delay it forever. The health care system can’t take another cost, especially right now.”

Coburn has introduced legislation to do just that, but most industry experts believe the prospects for a delay are poor. ICD-10 implementation has already been delayed twice, most recently in April 2012, giving “covered entities” an extra year that expires at the end of September. “I’d be shocked” if there’s a further delay, says Holly Louie, the ICD-10 coordinator for the Healthcare Billing and Management Association.

CMS administrator Jeff Hinson, in his conference call with Colorado providers, offered a stern warning about the October 1, 2014, compliance date. “You need to know that the deadline is firm,” he said. “The deadline is firm.”

That could spell disaster.

Despite desperate pleas from virtually every corner of the health care industry, the federal government has offered no details for comprehensive end-to-end testing of the new coding system before it goes live in seven months. “In meetings over the past two or three years between commercial payers and CMS, we were told that if everything went relatively smoothly, and we just saw the typical hiccups associated with a major transition like this, there could be as much as a one-year disruption in cash flow—for both large and small practices,” says Louie. “And that’s when we thought there would be end-to-end testing.”

Coburn, along with the other Republican physicians in the Senate, is trying to force CMS to perform comprehensive testing or to delay the start date. “Given the size and scope of the potential transition to ICD-10, the brevity and limited scope of this test is worrisome,” they wrote in their letter to Tavenner.

Annie Boynton, the ICD-10 trainer, says that 20 of the 50 states have done “nothing” to update their systems for ICD-10. “The sector of the industry that scares me the most is government,” says Boynton. “Historically, they are not great with major regulatory implementation rollouts,” she adds with a knowing smile. “HealthCare.gov was a perfect example. When [Health and Human Services] Secretary Sebelius was sitting in front of Congress, the Energy and Commerce Committee, answering all those questions, I had this really sinking feeling that in 2015, we’re going to be there again.” ♦

Upholding the Law

*What Congress can do in response
to an administration run amok*

BY JEFF BERGNER

Many Republicans—and a handful of independent commentators like George Washington University professor Jonathan Turley—have been highly critical of President Obama’s executive branch overreach. The president has arbitrarily delayed, deferred, or ignored provisions of numerous laws, none more so than his signature Obamacare legislation. There is indeed much to criticize; no other president in recent times has usurped congressional lawmaking powers to the extent Barack Obama has.

Administration spokesmen have defended these actions by pointing out that other presidents have also issued executive orders. But President Obama’s actions are less like executive orders in the usual sense of the term than they are like legislation. Nor are they based upon a constitutional argument that the president must act in response to a Congress that has intruded into areas that are properly under his constitutional authority.

These actions are the pure assertion of an unconstitutional presidential power to make law. What is needed now, however, is not further criticism, but a careful and sober consideration of what Congress can do to address this burgeoning constitutional crisis.

We should be clear: When we ask what Congress should do about it, we are really asking what congressional Republicans should do. Senate majority leader Harry Reid has demonstrated that he will not defend the institution of the Senate but will defend whatever President Obama does. Harry Reid was once an opponent of George W. Bush’s recess appointments, calling the Senate into pro forma session every three days to prevent them; Reid turned on a dime to support President Obama’s decision to ignore the very Senate pro forma sessions he had created.

Harry Reid once argued strenuously against

Republicans ending the 60-vote threshold for confirmation of presidential appointees. As majority leader, he adopted the very “nuclear option” he had so long opposed. In doing so he eviscerated a long-standing minority party protection merely to facilitate the confirmation of mid-level Obama political appointees.

Harry Reid has all but ended the Senate tradition of open debate. Reid controls not only what bills are considered on the Senate floor—a well-established leadership prerogative—but also what amendments can be offered to those bills. He has done this by foreclosing the amendment process with a parliamentary tactic called “filling the amendment tree,” turning the Senate into a mini-version of the House of Representatives. No other majority leader in recent memory has taken these steps—not Bill Frist, Tom Daschle, Trent Lott, George Mitchell, Bob Dole, Howard Baker, or Robert Byrd (who was a steadfast supporter of the Senate’s constitutional role). Beneath Harry Reid’s bland exterior beats the heart of a pure partisan. The Framers’ notion that a Senate leader would defend his institution rather than his political party is quaint and inoperative when it comes to Harry Reid.

IMPEACHMENT

One step available to House Republicans in response to President Obama’s overreach is outlined in Article II of the Constitution: impeachment. Before assuming this option is beyond the pale, we might ask whether it is really so crazy. Is Obama’s usurpation of congressional powers less serious than Bill Clinton’s cover-up of his sexual activities? Moreover, impeachment is politically possible. Impeachment of the president requires only a simple majority of the House, which Republicans hold. It does not require the cooperation of the Senate.

There are serious reasons, however, to doubt the wisdom of this course. First, the ground is simply not prepared. The idea of impeachment would strike official Washington—and most Americans—as coming out of the blue and as overkill at that.

Second, impeachment would produce immediate charges of racism, as if something other than the president’s

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actions had caused Republicans to take this step. Given the usual tongue-tied Republican reaction to charges of racism, Republicans would be well-advised to avoid putting themselves in this position.

Third, in today's vernacular, what is the "endgame" of this strategy? The House can bring charges against the president, but the Senate would adjudicate them, and there is no chance that the required two-thirds of the Senate would vote to convict. As we saw with Bill Clinton, a failed impeachment is almost an exoneration.

Finally, and most important, this powerful tool should not be used when other options are available. Barack Obama and Harry Reid may politicize everything they touch, but that does not mean Republicans should do so. Republicans should be prudent and employ a very high standard before resorting to the quasi-criminalization that impeachment implies.

LAWSUITS

A second option is recourse to the courts. Bringing suit against the president to invalidate his extraconstitutional actions is a reasonable idea. It has the advantage of bringing in a third, neutral party to adjudicate a dispute between the legislative and executive branches. House Republicans have long been wary of this approach, for one good reason: They too support delaying the implementation of Obamacare. Why sue to overturn welcome delays even if wrongly put in place by executive order?

In recent days, more than 100 House Republicans have overcome their hesitation and cosponsored Rep. Tim Rice's STOP (Stop This Overreaching Presidency) legislation to bring suit against the president. This is a good start, which offers several advantages.

It is by no means clear that the Supreme Court would take a case aiming to invalidate the president's actions; as a rule the Court tries to avoid disputes between the legislative and executive branches unless there seems no responsible way to avoid it. But the House would improve the odds of the Court taking this case by passing a resolution stating that its powers have been usurped in violation of the Constitution. This would prevent the Court from taking the easiest available escape route, as it did in the case of President Carter's termination of the mutual defense treaty with Taiwan. There the Court declined to take a case brought by individual senators because the institution itself had not taken a position. Individual members of Congress do not have recourse to the Court just because they lose a vote, but the House does if its constitutional prerogatives have been violated. The House leadership should pass such a resolution.

Moreover, the Roberts Court's decision on the constitutionality of Obamacare has positioned it perfectly

to favor the merits of a House case. The Roberts Court saved Obamacare by finding that its mandates are a tax. What authority does the president have to alter taxes unilaterally? That is precisely what he did when he changed the sign-up period for individuals and twice deferred the employer mandates. If the president can unilaterally defer provisions like these—while making no claim of constitutional necessity—can he defer the individual income tax at will? What is the limiting principle?

Finally, the Court probably would not rule quickly on a case like this (it will not rule until June on the recess appointment case argued before the District of Columbia Court of Appeals on December 5, 2012). There is ample time to implement a broader strategy.

DEFUNDING THE IRS

This brings us to a third option, which rests upon the congressional power of the purse. House Republicans have already taken this course, when they voted repeatedly to repeal and/or defund Obamacare. How would one more House vote to defund Obamacare help?

Defunding is the right idea, but there is a better target than Obamacare if the object is to address presidential overreach. What House Republicans should seek to defund, in whole or in part, is the Internal Revenue Service. The IRS is the enforcement arm of Obamacare. Without the IRS there is no enforcement of the individual mandate, no basis for determining individual subsidies, and no enforcement of employer mandates. The central role of the IRS in Obamacare should be clear enough from one perverse fact alone: In order to improve health care delivery in America, Obamacare creates not thousands of new doctors and nurses, but thousands of new IRS employees.

The president's overreach could fairly be described this way: In delaying and deferring provisions of Obamacare, he has given an unlawful order to the IRS. One could imagine a parallel universe in which an IRS commissioner would resign rather than obey such an order. In the real world of Democratic politics, however, this can be neither hoped for nor expected.

What the president has done with the IRS on Obamacare is of a piece with other actions of his administration. There have been many scandals, including Fast and Furious and Benghazi. Significant as these are, they pale beside the administration's effort to politicize the IRS, which strikes at the heart of decent, limited government, as the president seems willing to admit hypothetically if not in fact. The targeting of conservative public interest groups is not the only misuse of the IRS by this administration. Numerous other instances of what seems to be the

coordinated targeting of individuals by the IRS, the Justice Department, and the Labor Department exist. Be that as it may, if instructing the IRS not to enforce the law with regard to employer mandates is not an abuse of the IRS, it is hard to imagine what would be.

House Republicans should condition funding for the IRS in two ways. First, they should require the president to sign legislation enacting into law the steps he has taken by executive order regarding Obamacare. The president's position here is incoherent: He claims to act via executive order because Congress won't—but he vows to veto legislation passed by Congress to enact the very provisions in question. Is the president really asserting that he has unlimited power to alter and suspend laws and that Congress is superfluous?

Second, Congress should require the president to appoint an independent investigator to look into the IRS across the board, including its role in Obamacare and its targeting of both conservative public interest groups and individuals. The current internal investigation, headed by Obama campaign donor Barbara Bosserman, does not inspire confidence. Indeed, the president has already foreordained the outcome of this investigation by announcing there is not “a smidgen of corruption” at the IRS. Nor should it be too much to expect the president publicly to instruct not only the IRS but also the Justice Department and the Treasury Department to make available any and all emails bearing on these topics. This, after all, is the president who promised the most transparent administration ever.

The House should defund the IRS, in whole or in part, until these conditions are met and a degree of public confidence in the workings of the IRS is restored. In any event, all funding for new IRS employees to enforce Obamacare, many provisions of which have been delayed by the president, should be eliminated.

These steps would be opposed by the Democratic Senate and the president, but they would be widely supported by the American people. The IRS is not much loved by the public at any time; but a current Fox poll shows that 64 percent of Americans believe there is corruption at the IRS that should be fully and fairly investigated. What Harry Reid and the president would be defending in this instance is not the president's signature health care legislation, but the Internal Revenue Service, a far more daunting task.

A QUESTION OF TIMING

Taking these steps would bring Washington once again to the brink of a government shutdown, about which Republicans are correct to be cautious. Republican leaders, hoping to recapture the

Senate in the elections this fall, might decide not to rock the boat with a move to defund the IRS. They might be tempted to defer that step until 2015; after all, the president has provided one more year in which to undo the employer mandate. Republicans might prefer, as they did recently with the debt ceiling, not to take any step that could jeopardize their success in the November elections.

But a degree of courage is going to be required at some point to rein in the president's excesses. It is not enough to defer action to an indeterminate future date. Republican leaders should ask themselves a hard question: What is it they will accomplish with control of the House and Senate that they cannot accomplish now? What are the actual steps and projects they would undertake in 2015 with a Republican-controlled House and Senate? How would they overcome the president's vetoes, his bully pulpit, and the slavish devotion to him of the mainstream media?

There are no other arrows in the quiver. The Senate cannot and will not hold up the president's nominees until he follows the law; Harry Reid has seen to that. Nor are additional oversight hearings likely to have greater impact than those already held. An action-forcing event like the defunding of the IRS is needed. Republicans should make a strong, bicameral stand on this, and they should explain it and defend it directly to the American people. There is nothing unreasonable about requiring Congress to legislate the precise provisions for delay and deferral that the president has already established by executive order, or requiring the president to launch a serious outside investigation of an organization thoroughly in need of it.

Republicans should embrace the idea of adding the IRS to their campaign themes this year. A strong campaign pledge to take on the IRS is a political winner for Republicans of all stripes. The president's decision to address issues “by himself” will not disappear on its own. Indeed, the president is being urged on by Senator Chuck Schumer and others who seek openly to stifle conservative political speech through new politically motivated IRS regulations. The House has just passed a bill to rein in such regulations; with even some groups on the left concerned about IRS restrictions on political activity, strong pressure should be brought to bear on the Senate to do the same.

Once again, the IRS lies at the heart of the problem. The administration's efforts will not abate if Republicans control both houses of Congress; indeed, they are likely to increase. We are heading toward a serious and necessary struggle over presidential overreach. The stakes are high politically and, more important, constitutionally. A measure of courage will be required to address them. ♦



Hillary Clinton, Barack Obama, Robert Gates (June 22, 2010)

Man at War

A defense chief straddles two worlds. BY ELIOT A. COHEN

In that classic movie on war-time leadership *Twelve O'Clock High* (1949), Brigadier General Frank Savage (Gregory Peck) reluctantly recommends the relief of his good friend, Colonel Keith Davenport, who commands the stricken 918th Bomb Group flying out of England in 1942. Savage's diagnosis of the failure of the unit goes to the commander, and his unsparing critique of Davenport is "over-identification with his men." The commanding gen-

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Duty
Memoirs of a Secretary at War
by Robert M. Gates
Knopf, 640 pp., \$35

eral has Savage relieve Davenport—with considerable success, as the new commander whips the unit into shape and expresses a brutal lack of concern about the air crews' fates ("Consider yourselves already dead"). But this is just a mask, and by movie's end, Savage is a psychological wreck, catatonic and broken. He has succumbed to the same syndrome that destroyed his predecessor.

Gregory Peck is no longer around to play Robert Gates, and the casting would be incongruous: the handsome, athletic leading man portraying the pudgy, late-middle-aged spy and university-president-turned-warlord. But the phenomenon is the same: The seemingly ruthless, poker-faced leader with seawater in his veins is so torn up by the losses to his unit that, by the end, he has become a psychological casualty. Gates's subsequent efforts to downplay this side of *Duty* do not do justice to this book: His self-portrayal is of a man who goes home most nights to write letters of condolence to the families of the fallen, have a stiff drink, and weep. For those

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who saw him in government—I did, but only from a distance, and only episodically—the contrast with the impassive bureaucrat we thought we knew is stunning.

Even buried in the reminiscences about interagency processes that yield obscure policy outcomes is a self-portrait of a deeply emotional, and often very angry, man. He hates his job. He despises most members of Congress. He is at war (his word) with his own bureaucracy. He is furious at close allies. He despises micro-managing White House staffers and loathes the arrogant political advisers and sycophantic neophytes who surround the second president he served, Barack Obama. He compares himself to Edwin Stanton, Lincoln's secretary of war—and not to the fire-breathing bully who terrorized generals, drove the bureaucracy, and thereby helped achieve victory, but, rather, the war-time leader on the edge of a nervous breakdown who wailed in anguish, "God help me to do my duty! God help me to do my duty!"

One might think these a desirable set of attitudes in a secretary of defense: compassion for the troops, hostility to those whose own efforts and character do not measure up to the sacrifices of those troops, humility about his own abilities to discharge overwhelming responsibilities. Alas, they are not. Of course, admiration, compassion, and self-awareness are entirely appropriate to such a position; but a brooding concentration on the realities of wounds and death is disabling, as is excessive modesty. Gates himself acknowledges this: The memoir's very title, *Duty*, reflects his insistence that he accepted a position he found distasteful to the extreme, and that he remained in it only out of a sense of obligation to the country. Why, then, did he leave it? Because "I could afford the luxury of sentiment, and at times, it overwhelmed me." By the end of the volume, he informs the reader that he intends to be buried at Arlington National Cemetery, among his soldiers. It is an extraordinary decision. By way of contrast, let it be noted that Colonel Henry Stimson, who

served on the Western Front in World War I and was secretary of war during World War II, reposes in a churchyard in Cold Spring Harbor, New York.

Gates's submergence in pity and grief is not an isolated phenomenon. It was common in Iraq and Afghanistan to see generals visiting their units with breast pockets stuffed full of laminated pictures of the men and women who had fallen while under their command. It is not that such an acute, personal awareness of loss makes leaders timid and reluctant to use force: As Gates points out, he was the guy signing the orders that sent soldiers into harm's way. It is, rather, that by exposing themselves to an incessant clawing of private sorrow and remorse while simultaneously maintaining the composure of the impassive professional, the generals, like the secretary, set up an impossible psychological conflict.

In Michael Shaara's epic *The Killer Angels* (1974), Robert E. Lee makes this point:

To be a good soldier you must love the army. But to be a good officer you must be willing to order the death of the thing you love. This is . . . a very hard thing to do. No other profession requires it. That is one reason why there are so very few good officers. Although there are many good men.

That truth has not changed and will not, so long as countries wage war. It is up to leaders to recognize this truth, and to so manage their own internal equilibrium that the recognition of it does not overwhelm or disable them. There has been a good deal written about post-traumatic stress on the front lines; there is a similar phenomenon at the top of the military and civilian hierarchies, and, unwittingly, this memoir reveals a good deal of it.

Gates served two presidents well. His account of the later years of the George W. Bush administration is unremarkable and uncontroversial. He disagreed with the president on some things, but admired his determination and grit, recognized his

intelligence, and, broadly speaking, accepted the tenets of his policy. This included, interestingly enough, an appreciation for the necessary role of ideals and values in foreign policy. Gates may have once worked for Brent Scowcroft, one of the most realpolitik of American statesmen, but he is more in the mainstream of thinking about American foreign policy. He had great regard for his colleagues, including Secretary of State Condoleezza Rice and national security adviser Stephen Hadley, as well as his own immediate staff at the Pentagon.

Gates's relationship with President Obama and his administration was far more fraught. He agreed to stay on—although one suspects he did so less reluctantly than he made out at the time, or even than he remembers. To most of those around him in the Bush administration, he seemed to be enjoying a job at which he was very good. But despite some compliments to Obama for having care in making decisions, intelligence, a cool head, and some level of personal concern for the troops, Gates is scathing about the president's lack of interest in the wars in which he was engaged. Obama, in Gates's telling, cared passionately about the suppression of military leaks and repealing the don't-ask-don't-tell policy—and that was it. For the rest, Obama was "deeply suspicious of [senior officers'] actions and recommendations," and considered time spent with them merely a necessary chore.

More than one mother sent a son or daughter off to Iraq or Afghanistan doubting the wisdom of the conflict but drawing some comfort from the knowledge that President Bush was determined to win. It is hard to imagine the feelings of a parent doing the same when the commander in chief, by Gates's reckoning, really did not care about winning: "When soldiers put their lives on the line, they need to know that the commander-in-chief who sent them in harm's way believes in their mission." Obama, Gates makes quite clear, did not, and he was not about to pretend that he did.

Gates acknowledges Obama's courtesy to him, seeming at times to wish

to soften what follows. For if the picture of Obama is, at best, ambivalent, the portrayal of the denizens of the White House who surrounded the president is almost unmitigatedly negative. Vice President Joseph Biden is, in so many words, an amiable (and, at times, not so amiable) fool who belligerently tells the generals that they “should consider the president’s decision as an order,” as if they were likely to view it as a suggestion. The White House staff are, in Gates’s view, a bunch of hacks and amateurs whose only concern is domestic politics. Indeed, even Secretary of State Hillary Clinton and President Obama admitted to each other that their despised predecessor’s Iraq surge really worked and that their refusal to acknowledge as much, and their own opposition to it, reflected mere political calculations.

The new team came to power as contemptuous of their predecessors as they were ignorant of the realities of war, though profound believers in “the power of Obama’s rhetoric.” The National Security Council staff felt free to run around their boss, retired Marine general James Jones, to the dismay of Gates, a former deputy national security adviser in the best-run NSC ever, that of President George H. W. Bush. And Obama did not do much to correct matters. He would join his team in their Situation Room bull sessions devoted to heaping scorn on the Bush administration, ill-informed and unprofessional behavior that caused Gates to wonder whether it had occurred to any of these wisecracking novices that they were being offensive to him and to Admiral Michael Mullen, chairman of the Joint Chiefs of Staff, who had played a large role in conceiving and implementing those policies.

And towards the one professional who stayed on, retired lieutenant general Douglas Lute, Gates is not merely hard but uncharacteristically harsh. Lute, whom Gates had persuaded to abandon a promising military career in order to serve as Bush’s deputy national

security adviser for Iraq and Afghanistan, was a Gates ally during 2007-08. Having seen Lute up close, I can add that few public servants gave more of themselves, more honestly and faithfully, than Lute, though Gates rages against him for attempting to micro-manage the war in Afghanistan. Gates, who clearly wishes not to lash President Obama too severely, is thus reverting to the classic trope of blaming the king’s evil counselors, when it is much more likely that the National Security Council staff behaved as it did because



Robert Gates, Condoleezza Rice (2007)

that was the way Obama wanted it.

And, indeed, Gates’s argument along these lines often slips, such as when he admits that Obama came into office mistrusting the military, making no effort to get to know them and always suspecting them of boxing him in. In return, Gates talks of “White House double-crosses,” breaches of faith, and a president “who doesn’t trust his commander . . . doesn’t believe in his own strategy, and doesn’t consider the war to be his.” When Gates, or anyone else, speaks of the Obama White House, one has to remember that the White House is merely a building: The people in it are either doing what the president wants or what they think the president wants. And responsibility rests squarely with the commander in chief

himself. If Gates damns anyone here, it is President Obama, whether he wishes to or not.

Which raises the question of why Gates published *Duty* now. Here, again, there are two Robert Gateses. There is the one who is outraged when the president makes a sour remark about those attending a meeting taking notes for their memoirs. And there is the one who, in fact, writes the memoir, and publishes it while the president is still in office. The publication of this memoir now is a breach of faith and a violation of propriety that is hard to understand. If Gates believes that Obama is a disastrous president, surely he should have published this book in 2012, when it might have influenced the presidential election. If he is merely (and appropriately) contributing to our understanding of history, he should have waited until Obama leaves office. If he thinks he can change the president’s modus operandi and worldview by publishing it now, he is deluding himself.

Gates’s strategic views are similarly conflicted. He acknowledges that the 2007 Israeli strike on a North Korean-built nuclear reactor in Syria was a tactical success and a strategic achievement for the Israelis, if not for the United States. But he remains outraged that they took such action against a mortal enemy seeking to acquire the most lethal of weapons. When Iranian crowds took to the streets to oppose the regime in 2009, Gates sided with the ever-cautious CIA analysts and State Department officials who said that speaking out would only make the regime worse. He admits, in retrospect, that his view was wrong—and at odds with American values. He advocated a strategy in Afghanistan that formally renounced nation-building while building up a powerful Afghan Army to defeat, or at least reduce to marginal importance, the Taliban. And yet he bemoans the lack of civilian contribution to the Afghan war while failing to explain how to

build a strong and enduring military with a wreck of a civilian government behind it.

To dwell on these contradictions, however, would be to fail to acknowledge Gates's great contribution and supreme gifts. For if Gates was neither organizer of victory nor master strategist, he was a superb administrator who took charge of a dysfunctional Pentagon. He saw that the Defense Department, most definitely including the Joint Chiefs of Staff, was in thrall to a "damnable peacetime mindset." Soldiers might have begun wearing camouflage uniforms to work after 9/11—a comfortable but absurd practice, since none are likely to seek cover behind shrubbery or rocks in the Pentagon cafeterias—but peacetime practices and priorities persisted. Through a herculean effort, Gates forced the system to build and ship tens of thousands of purpose-built armored cars (Mine-Resistant Ambush Protected vehicles, or MRAPs) to Iraq and Afghanistan. Until then, the procurement bureaucracy had tinkered with armor of various kinds for the venerable Humvee, itself not much more than a souped-up version of the World War II Jeep. No amount of armor was really adequate for a vehicle that was not designed to handle mines bursting beneath it. Shame on the bureaucrats for failing to get the MRAP, or something like it, to the field in 2004 rather than in 2007—and everlasting credit to Gates for ramming it through. He saved American lives by the hundreds.

Gates was a strong and steady hand at the Pentagon, but nothing became him so much as his willingness to hold senior officers and officials accountable by dismissing them from office. Whether it was due to scandalous treatment of wounded soldiers at Walter Reed or mishandled nuclear weapons in the Air Force, Gates had no trouble firing generals or service secretaries. When Admiral Fox Fallon, whom Gates had appointed and liked, began criticizing what he believed to be elements in the administration looking for conflict with Iran, Gates gave him the axe. And, most impressively, he

decided that he had to fire a good guy who had done nothing wrong—General David McKiernan, the American commander in Afghanistan—because, Gates concluded, McKiernan simply was not up to the job of waging that war. (In doing so, Gates discovered that it was the first case, since Korea, of a general being fired for not being up to a combat command—and to his credit, Gates did it the only decent way a boss should: in person.)

This curious memoir is many things: a contribution to the historical record, an interesting reflection on leadership at the top, and an unnerving warning about the personalities that will dominate American national security decision-making for three more years. It does not always reflect as well on its author as he might have

wished, but that is because he is more honest than most memoirists.

The title is well chosen. Whether or not he enjoyed being secretary of defense (he insists that he did not), it is abundantly clear that Robert Gates did not seek the position and accepted it reluctantly but unquestioningly for the reason explained in the title: duty. He discharged his responsibilities with energy, efficiency, honesty, and intelligence. His job was not to build a military for the next two decades but to keep the war effort together. In that, he succeeded, and he deserves the country's thanks for it. He deserves, as well, some understanding of the psychic toll those accomplishments took on a man who ends his memoir by contemplating his eventual burial in Section 60 of Arlington National Cemetery. ♦



Too Much Sunshine

The quick, easy search for unconventional Florida.

BY THOMAS SWICK

It is occasionally noted that Florida has replaced California as the legitimate home of the nation's nuts, but what is left unmentioned is that Floridians, unlike Californians, embrace the title—sort of the way England cherishes its eccentrics, though they are generally a more lovable group.

Journalists in the Sunshine State are unquestionably the most passionate about the oddballs in their midst, which isn't surprising, since they have the most to gain from them. When I arrived in 1989 to work at the *South Florida Sun-Sentinel*, all the reporters raved about what "a great news state" this was. (The enthusiasm was somewhat lost on me, since my job as travel editor regularly took

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Fringe Florida

Travels among Mud Boggies, Furries, Ufologists, Nudists, and Other Lovers of Unconventional Lifestyles

by Lynn Waddell

Florida, 256 pp., \$24.95

me away from the wackiness.) But their assessment of our pistol-shaped peninsula has not only stood up over the ensuing quarter-century, it has, if anything, become more accurate. In the first month of this year, we saw the fatal shooting, near Tampa, of a man who was texting during a movie, as well as the closing of a Miami Beach strip club because one of the dancers had only recently become a teenager. The name of the club—profanely or appropriately—was Madonna.

These things could happen anywhere, but their prevalence in Florida

helps solidify an image of the state as a place where such aberrations not only occur with some frequency, but flourish and grow in our steamy, transient climate. Granted, it's often a self-proclaimed image: A few days after Justin Bieber was arrested in Miami Beach for drag racing under the influence, a column appeared in the *Miami Herald* with the headline "Bieber's follies an 'only in Miami' act."

Some things *are* quintessentially Miami. This is a city that no longer

covering their inner "mermaidness." Something tells me that not many of them reside in Nebraska.

Mermaids don't appear in *Fringe Florida*, which is a shame, as they are more indigenous than some of the groups that do—notably, bikers, fetishists, swingers, and ufologists. I doubt that Gulf Breeze, in the Panhandle, has anything on Roswell. Similarly, bikers—even female ones, who are the focus here—are more of a national than a local phenomenon.



Weeki Wachee mermaids (2013)

has its King Orange Jamboree Parade, but every year puts on the King Mango Strut, an event that was created as a sendup of the first. Early in January, the *Herald* reported that a champion French bulldog had been stolen from a Miami home on New Year's Eve. This seemed to be your standard canine kidnapping story, until, in the second paragraph, the name of the dog was revealed to be "El Che." And some things are quintessentially Florida. Recently, I went to one of the beachfront hotels in my hometown, Fort Lauderdale, to watch the Friday evening mermaid show (visible through windows in the bar that look into the pool). Afterwards, I talked to a woman, a former underwater performer at Weeki Wachee, who assured me that tailed aquatic activities are the next big thing, as more and more people are dis-

In the introduction, Lynn Waddell explains her methodology:

Each subculture described in this book is distinct in some significant way from its cousins in other states. The lifestyles either originated in Florida or dwarf ones elsewhere in size or prominence. For instance, San Francisco and Boston are hotspots for fetishists who dress up like horses, but Florida is home to the International Pony Play Championships.

Makes a Floridian proud.

Waddell is a native of Alabama, but has lived in Florida for a number of years and worked for an alternative paper in the Tampa Bay area, a job that introduced her to some of the wonders covered here. A fair number of the book's subjects—strippers, mud-ders, nudists—also make their homes

in central Florida. And though those of us who live in the southern part of the state (which is the least "Southern" part of the state) tend to assume that we have a monopoly on subtropical outrageousness, seeing our region as the adult (XXX) counterpart to the kiddie parks to the north, *Fringe Florida* demonstrates that there is more than enough deviant behavior to go around, from Pensacola to Miami. In fact, the one place outside the geographic range of the book—Key West—is one of Florida's, if not America's, most idiosyncratic towns.

People who visit our southernmost settlement may feel it has no competition for the title (especially if they come during Fantasy Fest). But they are tourists who never make it to Cassadaga. Northeast of Orlando, Cassadaga is a community of psychics, a place where Spiritualist Street intersects with Mediumship Way, where the town bookstore sells "prayer beads, fairy figurines, Native American dream catchers, crystals, healing rocks," and books, mostly on the paranormal. Waddell takes a tour of the town with a man who believes in fairies; submits to a reading with a gray-haired medium; and allows some personal skepticism to seep through her generally straight-faced reporting.

Another place bypassed by tourists, but not by Waddell, is Gibsonton (aka Gibtown), whose population was once made up largely of retired circus performers and sideshow acts. (It's not far from Sarasota, the former winter home of the Ringling Brothers and Barnum & Bailey Circus.) Today it's mostly a ghost town, but Waddell finds a still-working showman, Ward Hall, who regales her with stories of old friends like Poobah ("perhaps the most iconic American circus and sideshow dwarf"), and Monkey Girl and Alligator Man, who eloped together.

This, for me, was the most intriguing chapter, possibly because the subjects were people for whom Waddell could feel empathy—and with whom she could perhaps even identify. (Journalists, though not necessarily freaks, *are* outsiders.) Elsewhere in the book, she occasionally establishes a connection—with the women bikers,

for instance—but most of the time she keeps a distance while earnestly trying to understand. Sometimes too earnestly: A few of the chapters read like overlong feature stories. But the information Waddell unearths is almost always interesting. The Redneck Yacht Club—to which people drive their swamp buggies and trucks—cost \$1 million to create and contains mud pits, dams, a stage, a racetrack, and two helicopter pads so injured mudders can be quickly airlifted out.

Billy Graham, we learn, got his start in Tampa, preaching to streetwalkers and derelicts (from prostitutes to presidents). The Church of Scientology “owns about half of downtown Clearwater and considers the city its spiritual headquarters.” The first swamp buggy was created by a mechanic in Naples. Daytona Beach’s Bike Week began in 1937, and women’s coleslaw wrestling was introduced to the event in 1985 (apparently the first time the world had seen shredded cabbage grappling). Today, Bike Week is the largest motorcycle event in the world.

This is one of the book’s many lapses into superlatives. The largest

Hare Krishna commune in the country sits just outside Gainesville (home to the University of Florida), and Florida leads the nation in the number of topless and nude strip clubs (which employ, apparently, America’s youngest dancers). Miami hosted the country’s largest swingers’ convention, while Coconut Creek, just up the turnpike, boasts the oldest swingers’ club (with, quite possibly, the world’s oldest swingers). After Californians, Floridians own the most motorcycles. No state has more animal exhibitors or, according to “online fetish registries,” human ponies per capita. Many of them, fittingly, live near Ocala, which is Florida horse country. Pasco County, just north of Tampa, has been labeled the “Nudist Capital of the World” (by the American Association for Nude Recreation) and is home to the nation’s largest nudist resort, Caliente Tampa Resort, which holds a Bare Buns Biker Party.

Paradise on earth has become a travel-writing cliché, but if you’re a nudist biker in Florida with a swinger partner, a pet iguana, and a mud buggy, it would seem that you have found yours. ♦

Vision for a Stronger America, it is a vanity project for politicians looking to inoculate themselves from the electoral downsides that their party labels might carry. Its rallying cry is “Republican politicians of blue states, Democrats of red states . . . UNITE!”

That is scarcely a stirring call to action—and of course, No Labels does not want you to walk away thinking this. Still, the impression is undeniable, at least when you get beyond the clichés and tautologies with which this book is riddled. My favorite among its many non sequiturs comes from Alice Rivlin, former director of the Office of Management and Budget under Bill Clinton, who explains, “We must break the gridlock by restoring dialogue and cooperation right now.” In other words, we must break gridlock by breaking gridlock. In another section, we are told, “Washington isn’t lacking a way, but increasingly, it seems to be lacking the will.”

If you ever played junior varsity football and would like to revisit the pep talks about giving 110 percent, then this book is for you. If, on the other hand, you’re looking for serious solutions to today’s problems, then you’d do best to look elsewhere. The Big Idea of *No Labels* is that America must plan to have a plan for national greatness. Beyond that, this is mostly an opportunity for incumbent politicians to tell us how awesome they were before they got to Congress. Representative Kurt Schrader (D-Ore.), for instance, regales us with a story of how he and the Republican leader of the legislature worked together to build a veterinary college. Representative Charlie Dent (R-Pa.) explains how he and Ron Kind (D-Wis.) almost got the medical device tax repealed (which, by the way, Kind had voted for in the first place). Representative Lynn Jenkins (R-Kan.) explains how she prevailed upon a Democratic-controlled Congress to help the 66 families of Treece, Kansas, relocate because of an environmental hazard.

Verily, these stories of courage and perseverance can serve as a template for tackling Medicare and the runaway cost of college educations. Yet



The Middle Kingdom

Everybody loves the spirit of compromise.

Except voters. BY JAY COST

Historically, potent third parties or outside political movements have had one of two origins. On the one hand, they were driven by powerful personalities who did not fit cleanly within either of the major parties: Theodore Roosevelt (1912), George Wallace (1968), and H. Ross Perot (1992, 1996) are the three primary examples. On the other hand, they represented some interest or fac-

No Labels
A Shared Vision for a Stronger America
edited by Jon Huntsman and Joe Manchin
Diversions Books, 104 pp., \$9.99

tion that was being ignored by the two major parties: Among such groups, we may count the abolitionist movement of the 1830s-50s as well as the populist movement of the 1880s-90s.

The group called No Labels fits neither of these categories. So what is it? Judging by *No Labels: A Shared*

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the central premise of *No Labels*—If only all of Washington were more like Jon Huntsman, Joe Manchin, and Charlie Dent—makes it not so much useless as harmful. It implies, falsely, that personalities and partisanship are the cause of our problems, when in fact the opposite is true: The nation's problems are sufficiently substantial that there is *no* consensus on how to solve them, hence the yawning partisan divide. Democrats and Republicans disagree on basic premises about what to do next, and, as is evident from *No Labels*, nobody in the middle has any actual ideas about how to bridge the divide.

In the end, political disagreements are not about people in Washington being jerks; they are about real trade-offs between competing visions of the public good, something that *No Labels* willfully ignores. For instance, *No Labels* calls for a balanced budget in 2030, as if that were possible without substantially raising taxes, cutting the military to the bone, or totally reorganizing the welfare state. In other words, absent the kind of robust economic growth that the United States witnessed in the 1990s, balancing the budget will create vast classes of winners and losers—hence the gridlock of today.

The same goes for *No Labels'* call to reform Social Security and Medicare to ensure that they are sustainable for the rest of this century. Great! But that would require either raising taxes or altering the structures of these programs, which means that somebody, somewhere, is going to be much worse off.

The country at large is certainly frustrated by the lack of consensus in Washington, but if people want someone to blame, they should look in the mirror. There are many dysfunctional things about our government, but gridlock isn't one of them. Gridlock is a product of the absence of public consensus. Both parties offer divergent paths forward, but election cycle after election cycle, the nation as a whole exclaims, "I can't decide!"

In the past, compromise has been possible on certain issues, but not on

anything like the challenges we face now: a looming entitlement crisis, a middle-class squeeze, persistently weak economic growth. Moreover, none of these problems can be solved by men and women of goodwill simply hammering out a bargain. It would require some kind of guid-

ance from the nation at large, and the country has steadfastly refused to offer any. By pointing the finger at Washington, *No Labels* plays to the vanity of the "undecided" voter much as it plays to the vanity of moderate pols in Washington. In so doing, however, it offers no solutions. ♦



Good Night, Sweet Prince

The Met metes out a rebuke to Vladimir Putin.

BY PAUL DU QUENOV

February was a bad month for Vladimir Putin. Despite Russia's impressive Olympic victories, the Sochi Games turned out to be a \$51 billion showcase of graft and corruption that even the Kremlin's deftest apologists could not explain away without sounding embarrassingly Soviet. Then, as the Potemkin-village closing ceremony bored the world, Putin's obedient satrap in Ukraine, Viktor Yanukovych, lost his two-month battle against an energized national opposition angered by his clumsy, Kremlin-induced decision to reject closer economic ties with the European Union.

Lenin statues across Ukraine bit the dust as the rebels turned Yanukovych into a fugitive from revolutionary justice whose private pleasure palace and zoo are now open to the public. On February 24, Putin maintained a stony silence as his country observed a holiday weekend for Defender of the Fatherland Day. Formerly Red Army Day, it commemorates the anniversary of Trotsky's 1918 decree drafting soldiers to defend the incipient Soviet regime against internal enemies.

It was a pure but striking coincidence that both the gaudy Olympic display and the dramatic denouement in Ukraine should accompany an ambitious American foray into

Russian culture. Just as the Olympics began, the Metropolitan Opera opened its production of Alexander Borodin's only opera, *Prince Igor*. Absent from the Met's repertory for nearly a century, it last appeared (in Italian translation) in 1917. I celebrated Defender of the Fatherland Day by attending a late-run performance.

Borodin was a surgeon and research chemist who composed music in his spare time. He worked on *Prince Igor* for eight years before he died suddenly in 1887, aged 53. He left the opera incomplete, but sympathetic colleagues—Nikolai Rimsky-Korsakov and Alexander Glazunov—patched together what they could from various notes and fragments and used their intuition to complete the score and fill out the orchestration.

Steeped in Russian history and based on the first known Russian epic tale, *Prince Igor* takes us back to the Middle Ages, when Kiev was not a rebellious national capital on the periphery of a decaying empire, but the political and economic epicenter of what we now know as Russia. Kiev stood atop a loose confederation of principalities ruled by a dynasty that claimed descent from the Viking warriors who mastered the Eastern Slav lands around 860. Among these principalities was the minor realm of Putivl, located in what is today north-eastern Ukraine, close to the Russian border. In the late 12th century, its ruler,

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Igor Svyatoslavovich, led a campaign against the Polovtsians, a nomadic Turkic tribe that dominated the arid steppe borderlands to the east and raided Slavic settlements and trade routes.

In the course of events, Igor is defeated and captured, only to find that the Polovtsian ruler, Khan Konchak, treats him as an honored guest and offers him his freedom if he will lay down his arms. Igor is too proud and tormented by guilt to accept, even though his son and the khan's daughter have taken the opportunity to fall in love. At home, meanwhile, Igor's roguish brother-in-law, Vladimir, Prince Galitsky, terrorizes Putivl and tries to seize power. He is felicitously killed as the Polovtsians attack and devastate the city. Having escaped captivity, Igor returns to his ravaged domain to popular acclaim, defiantly exhorting his people to crush Russia's enemies.

When Borodin's opera premiered posthumously in 1890, its strident celebration of Russian patriotism struck powerful chords, not only with nationalists but also with "Eurasianist" Russians who took pride in their country's Asian heritage and viewed their culture as an appealingly exotic fusion of East and West. As the illegitimate son of a Georgian prince and a Russian peasant woman, Borodin himself strode that divide.

The Met's production is by Dmitri Tcherniakov, who makes his company debut. Tcherniakov has a reputation as an *enfant terrible*—he set the claustrophobic first act of *Tristan und Isolde* in a modern submarine—and in *Prince Igor* he dismisses much of the cross-cultural content in favor of politicized psychodrama. Indeed, the entire act featuring Igor's captivity and rosy reception by the Polovtsian khan is reduced to a fantasy, or hallucination. A giant video projection of the grievously wounded prince yields to an imagined field of flowers, where he and the other characters explore his subconscious longings and fears. The khan's daughter, the smokingly seductive Anita Rachelishvili, made the scene impressive—although the famous Polovtsian dances, choreographed to Borodin's driving Oriental rhythms by Itzik Galili, look like

jazzercise for stressed out baby boomers.

Greater emphasis falls on the psychodrama at home. Putivl emerges as a metaphor for all of Russia, elaborated by sets and costumes that suggest an early-20th-century society teetering on the brink of war and revolution. When the action returns to the beleaguered principality, we find Igor's brother-in-law Vladimir running amok: He and his security services push around Igor's wife Yaroslava (Oksana Dyka, in her role debut) and her law-abiding subjects. Surprise! They must pay bribes to get things

conductor Gianandrea Noseda decided to end with a plaintive and virtually unknown Borodin melody as a sort of coda to the final act. As it plays, Igor wrests himself away from the crowd's adulation to lead them in the prosaic task of clearing rubble. Tcherniakov insists that Igor's people are giving him a pass for having recognized his weaknesses and courageously moved on, but the greater temptation is to stare in disbelief as the shell-shocked populace praise and obey their leader no matter how disastrous he has been.



Ildar Abdrazakov as Prince Igor

accomplished, and they can do nothing when they and their loved ones are abused and violated by the governing thugocracy. In the middle of a drunken debauch, this ne'er-do-well, performed with exquisite brutality by the talented bass Mikhail Petrenko, cries out that he will "restructure" the government and, naturally, seize the treasury: "What else is power for?" he snarls, in a rhetorical flourish that would astonish no one if the lines came from the pouting lips of another famous Vladimir.

Igor finally regains his realm, still haunted by his failures as a leader and man. In what could only have been a coincidence, his once-proud city hall now looks remarkably like Evromaidan after the pitched battle that routed Yanukovich. Defying logic, Igor's downtrodden people emerge from the ruins to celebrate his return to the strains of triumphant music.

In this production, Tcherniakov and

A stellar musical performance allowed these messages to resound in profound relief. One of the luxuries of the post-1991 world is that the Met can field an extraordinarily talented cast drawn almost entirely from former Soviet republics, led by the authoritative Russian bass Ildar Abdrazakov as Prince Igor.

Vladimir Putin has called the collapse of the Soviet Union "the greatest geopolitical catastrophe of the 20th century." Yet without that very "catastrophe," and the consequent end of the Soviet system's oppressive travel restrictions, the American public might well have had to wait another 97 years to devour with such authenticity these searing psychological insights into Putin's regime. The New York audience seems to be drawing the right conclusions, but Tcherniakov should probably be careful when he goes home. ♦

How Do You Feel?

The interrogative mysteries of Deep Space.

BY JOE QUEENAN

Last June, scientists at the Astrolabe Institute in Houston made an electrifying discovery. While listening in on sounds emanating from deep space, they heard what seemed to be a conversation between two sentient creatures located on Nardalus X-50, a small, recently discovered planet.

It was clear from the general rhythm of the conversation that one creature was asking questions and the other was answering them. The speakers had similar voices, cadences, and accents. But the creature posing the questions seemed to be animated and enthusiastic while his interlocutor seemed to be responding in a rote, mechanical fashion. As if he didn't want to be there. As if he had answered the same question many times before. As if he had a plane to catch—if planes existed on his planet.

Initially, there was no way of telling what the two creatures were saying to one another. A phonetic record of the exchange looked something like this:

Speaker 1: Evgh, ijhty ghuoi sdhgry
vvdh hkjgf dlgyh hjyt?

Speaker 2: Prt grggg.

Speaker 1: Ghrf evgh rhth, ghjrt chrg
hijgy?

Speaker 2: Prt grgggy ghrt.

The exchange was referred to the DeBeauvoir Foundation in France, which specializes in translating arcane texts. By assigning numeric values to the letters in the verbal exchanges, much as one would to crack a secret code, the researchers were able to piece together a general idea of what the two creatures were discussing. The

language being spoken has 5,300 consonants and nine vowels, and is surprisingly heavy on diphthongs. The translation read like this:

Speaker 1: It must be great to start off the trip like this. On a positive note.

Speaker 2: It is. It is.

Speaker 1: Tell us how it feels to start a trip like this. On a positive note.

Speaker 2: It feels great. It's always good to start a trip on a positive note.

Speaker 1: How great is it for the other guys to start a trip like this on such a positive note?

Speaker 2: It's really great. Really great.

On first hearing, the exchange seemed to be taking place between a TV or radio personality and a politician or entertainer. This suggested not only that there is intelligent life in Outer Space, but that there is fun. The shock waves rippled throughout the scientific community.

Over the next few months, scientists at Astrolabe recorded many other conversations. The voices were always the same. And the structure of the conversation was always one creature interviewing another. More interesting, the first speaker was always animated, even peppy, while the second speaker was always terse, responding in clipped, measured tones:

Speaker 1: How great is it to be so great?

Speaker 2: It's great. I love being great.

Speaker 1: Do you consider yourself in any way "blessed" to be so great?

Speaker 2: Yes, I consider myself blessed. Not everyone can be as great as I am. I am so, so lucky.

A third exchange ran along similar lines:

Speaker 1: That must have felt great out there today.

Speaker 2: It did. It felt great.

Speaker 1: How great did it feel to feel that great?

Speaker 2: Very great. Very, very, very great.

Speaker 1: Great. Thanks for joining us. Guys?

Until the first speaker pronounced the word "guys" in his abstruse language, the scientists at DeBeauvoir were not sure what they were dealing with. But "guys"—the universal shorthand for "back up to you guys in the broadcast booth"—is now viewed as a sort of Rosetta Stone, a cultural template allowing human beings to decode precisely what is being said in even the most enigmatic exchanges. All the evidence now suggests that the conversations are between a sideline reporter at an athletic event and the star of the particular event.

"That's all we've been able to track so far," says a somewhat dejected Mitch Collins, the Astrolabe Institute's executive director. "We can't pick up anything from the sports broadcasts themselves, and nothing from the rest of the planet. All we're getting are these generic post-game interviews."

But doesn't this, at least, prove that there is life on other planets?

"No," says a disconsolate Collins. "We think the creature conducting these interviews might be some sort of extraterrestrial parrot, simulating post-game interviews he heard while he was listening in to broadcasts from Earth. Another thing: We now have reason to believe that he's playing both roles in the interview. The creature we've been listening in on, whether android, bird of prey, or humanoid, is a loner from Deep Space who has somehow, for whatever reason, transformed himself into a sideline reporter. He probably doesn't even know what he's saying. We're also pretty certain that the sideline reporter this creature is mimicking probably worked on *Monday Night Football*, and perhaps covered the Sochi Olympics."

Does this mean there is no intelligent life in Outer Space? "It doesn't mean that there's *none*," says Collins, mulling over the question carefully. "But there's certainly not a whole lot." ♦

Joe Queenan is the author, most recently, of *One for the Books*.

Monumental Bore

The perfect war story becomes an imperfect star vehicle.

BY JOHN PODHORETZ

The *Monuments Men* is a profoundly well-intentioned movie that seeks to pay deserved tribute to a subject both moving and dramatic: the effort by the Allies to protect the cultural patrimony of the West during World War II. But just as the road to hell is paved with good intentions, so, too, it would appear, is the road to excruciating boredom.

All the elements of a classic war picture are here: unlikely military men, unusual mission, the inherent conflict between doing what is necessary to win a just war and preserving precious and delicate goods. But *The Monuments Men* is a total stiff, one of the more unconvincing depictions of war and its consequences ever made.

The movie is taken from the 2009 book of the same name, which details how a dozen or so extremely unconventional and startlingly old soldiers (the youngest in his mid-30s) were assigned to do what they could to either prevent the bombing of historic and culturally significant sites or mitigate the damage that followed bombings and street battles. For a year following the D-Day invasion, they accompanied American troops and tried to locate great works of art stolen by the Nazi high command, hidden away in caves and mines and on trains.

The book, by Robert Edsel and Bret Witter, is overstuffed and, at times, ludicrously melodramatic. By contrast, the movie is understuffed and uninvolved, no doubt in part because of budgetary considerations. *The Monuments Men* mostly takes place as the U.S. Army is moving,

The Monuments Men

Directed by George Clooney



or trying to move, into Germany through France and the Low Countries, where they get mired in the Ardennes Forest in the nightmarishly cold winter of 1944-45, during the Battle of the Bulge. But you never get a sense of the sheer scale of the conflict. You never get a sense of the sacrifices, the human cost to the liberators. Mostly, you see a lot of rubble.

The book fails because it seeks to tell the story of the war's last year in Europe through the eyes of the Monuments Men; but they were glancing participants, and their undeniably noble mission was nonetheless incidental to the outcome of the war. Still, they could have been the dramatis personae for a terrific movie. The real-life Monuments Men included a curator at the Metropolitan Museum of Art, an innovative painting conservator, a public-art sculptor, and the cultural impresario Lincoln Kirstein—all of whom wanted to join the war effort to make a difference and to help save Western civilization from the Nazi horde as best they could.

George Clooney, who also cowrote and directed the film, plays the head Monuments Man. He is supported by Matt Damon, Bill Murray, John Goodman, Jean Dujardin, and Bob Balaban. You could not have asked for a more watchable cast, but none of them is given a character to play. Instead, Clooney twinkles, Damon grins, Murray smirks, Dujardin glitters, Goodman mugs, and Balaban frowns. The winsomeness is oppressive, especially when

accompanied by a whimsical musical score by Alexandre Desplat.

Cate Blanchett, perhaps the most overrated actress alive, is nothing short of ridiculous in her supporting role as a dowdy French museum official. The real-life model for her character, Rose Valland, was a remarkable person who burrowed herself into the Jeu de Paume museum in Paris and, at enormous personal risk, kept secret track of the art being stolen by Hermann Göring and other Nazi monsters. Her book on the subject was the loose source material for the riveting 1964 movie *The Train*, with Burt Lancaster as a French railway official in 1944 trying to prevent the Nazis from removing France's birthright before the fall of Paris. She would make a great central character for a film.

Instead, Clooney has Blanchett glowering and pouting and declaiming her wooden dialogue in an accent that makes her sound like Natasha from the Boris and Natasha cartoons as she casts smoldering glances at Matt Damon—who looks like he would rather be captured by the Germans than spend a night in bed with her.

Perhaps the central problem of *The Monuments Men* is that Clooney and his cowriter, Grant Heslov, simply don't know how to make a genuinely, unambiguously, flag-wavingly patriotic picture. Clooney's political movie-making, both as actor and director, has tended to feature the U.S. government and its armed forces as, at best, morally compromised and, at worst, villainous. Without that cliché to hold on to, Clooney is on shaky ground, which may help explain why he delivers an odd slam to, of all people, Dwight D. Eisenhower, who, in 1944, actually issued the order protecting artistic and historic sites. Clooney and Heslov have Clooney's character briefing Franklin D. Roosevelt, who gives the go-ahead to form the Monuments Men. We only see Eisenhower later, in a scene in which the Monuments Men look on with amused disgust as he cynically takes PR credit for the discovery of a cache of German gold.

Well, of course. Ike was a Republican, after all. ♦

John Podhoretz, editor of Commentary, is THE WEEKLY STANDARD's movie critic.

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